

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1142ND MEETING SESSION (17TH OF 2002)

+ + + + +

MONDAY

DECEMBER 9, 2002

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES H. HANNAHAM	Commissioner
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

ZONING COMMISSION STAFF PRESENT:

ALBERTO BASTIDA	Secretary
SHARON SANCHEZ	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, ESQUIRE Corporation Counsel

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OFFICE OF PLANNING STAFF PRESENT:

ANDREW ALTMAN	Director
ELLEN MCCARTHY	Deputy Director
MAXINE BROWN-ROBERTS	Office of Planning
STEPHEN MORDFIN	Office of Planning
VENITA RAY	Office of Planning

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P-R-O-C-E-E-D-I-N-G-S

1:39 p.m.

CHAIRPERSON MITTEN: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia for Monday, December 9th, 2002.

My name is Carol Mitten. And joining me this afternoon are Vice Chairman Anthony Hood, and Commissioners Peter May, John Parsons and James Hannaham.

We have a few things that, we're going to reorganize our agenda here. Mr. May has to leave. So the first item we'll take up is the final action item on the Sua Sponte on the King's Creek BZA case.

We'll defer action on the minutes until the end, as well as the Office of Planning Status Report. We will move Item B, under Proposed Action, which is the Recreation Center's case, up before Hearing Action, since we have two recreation/community centers involved in two of the cases for Hearing Action.

And then we'll get back to the rest of the order on the schedule. And as it relates to the item of correspondence, my understanding, Mr. Bastida,

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1 perhaps you could explain the service requirements for
2 Motion for Reconsideration.

3 MR. BASTIDA: It has to be provided, it
4 has to be served by each party. The ANC was served
5 but it was done by correspondence. An accordingly, an
6 additional three days is required, so the final
7 deadline is not until the 12th.

8 If it would have been served, the final
9 deadline would have been today --

10 CHAIRPERSON MITTEN: All right.

11 MR. BASTIDA: -- by, hand carried. Even
12 though the ANC 6-A, I believe --

13 CHAIRPERSON MITTEN: B.

14 MR. BASTIDA: -- B, I'm sorry, thank you
15 -- did take an action endorsing the extension of the
16 original request, we believe that it would be best to
17 postpone that item and take it in January in which all
18 the crucial dates would have been fulfilled by then.

19 CHAIRPERSON MITTEN: All right, thank you.

20 MR. BASTIDA: Thank you.

21 CHAIRPERSON MITTEN: So we'll just put
22 that on for action in January. All right. Now, we're
23 ready to go to the case, the final action for Zoning
24 Commission Case Number 02-37, which is the BZA Case

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1 Number 16869.

2 And I'm going to turn this over to Mr.
3 May, since he brought to us and let you take the lead.

4 MR. MAY: Okay. By now we've all received
5 the materials on the, on this case. King's Creek
6 Development's variances to construction. Let's see,
7 it's Application Number 16869 for variance of floor
8 area requirements, lot occupancy requirements,
9 non-conforming structure provisions, and a special
10 exception and eventually a variance to exceed the
11 height provisions.

12 There was a bit of confusion, as you may
13 recall, initially on whether this, whether a special
14 exception or a variance was required for height, given
15 that the property was considered to be part of a
16 Reed-Cooke overlay.

17 As it turns out in the end, the BZA
18 reopened the case and granted a variance on the height
19 aspect after it had been determined that the property
20 was actually not included in the Reed-Cooke overlay.

21 We have received information from the
22 Applicant or their attorney, and the facts of the
23 case, for the four different variances or special
24 exceptions that had been granted, I don't see that

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1 there's much significant issue with lot occupancy.

2 This is, we're dealing with an addition to
3 an existing structure which has value and merit, and I
4 think that part of the case was convincing. I don't
5 know if there's much of an issue with that.

6 The special exception for an addition to
7 an existing building, again, that's fairly well
8 documented. And so what remains really the crux of
9 the issue is the variance for height, where they're
10 asking for roughly 69 feet in an area where I believe
11 40 feet was the maximum.

12 And then an increase in the FAR. And
13 fumbling through my papers I see what had been
14 requested was 3.9 and, the existing was 1.9 and the
15 allowed was 1.8. The, with regard to the height
16 overall, there was certain justification presented in
17 the initial case as a method of avoiding, creating
18 sort of a canyon effect on Champlain Street.

19 And this was the justification for
20 essentially having a very tall building for the back
21 of the structure and leaving the front of the
22 structure closer to the street level or the existing
23 facade.

24 I think that there is some validity to the

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1 argument in general, but going that far up, going up
2 to 69 feet versus, it's actually, it's 50 which is
3 allowed in the R5B, is extraordinary and increasing
4 the FAR from 1.8 to 3.9, I also found to be
5 extraordinary.

6 In order to get those, that, that
7 development to be allowed as matter of right,
8 essentially the property would have had to be zoned at
9 R5D, by my calculations, for the height. And R5E for
10 the FAR.

11 And that leap is simply too far to go.
12 And I think that, in effect, the BZA exceeded its, its
13 mandate and effectively rezoned the property. I'm not
14 sure what more I need to say.

15 CHAIRPERSON MITTEN: Okay. I'll pick it
16 up from there. I mean I agree with you completely on
17 the issues related to FAR and height. In fact, your
18 approach was to say, well, what zoning category would
19 this be elevated to, which I think is an important
20 test.

21 But what struck me is that the addition
22 that they're talking about putting on top of the
23 existing structure is the building that they could
24 build as a matter of right.

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1 It has the density and it has the height.

2 So they're talking about building what they have as a
3 matter of right on top of an existing structure. So
4 all of that just brings home the point of, you know,
5 how, how significant the relief that was granted was.

6 I think Mr. Farmer sort of, when, in his,
7 in his response to the Commission on the Sua Sponte he
8 points out something that is, I think, at the crux of
9 this. Which is, he says the zoning regulations do not
10 provide specific limitations on the magnitude of
11 variances.

12 And that's true. There are no specific
13 limitations. But BZA did not show any acknowledgment
14 of the proportionality of the relief granted relative
15 to the practical difficulty that was created.

16 And that's why we see this huge, I mean
17 once you meet the test for uniqueness and practical
18 difficulty, it's not the sky is the limit from that
19 point. And I think that there is a degree of
20 proportionality.

21 Which is why, in addition to the
22 three-prong test, the relief granted has to be not
23 inconsistent with the, or promotes the generalized or
24 it promotes the zoning math and the zoning regulations

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1 and is consistent with what's intended for a
2 particular area.

3 I would be a little bit more strict on the
4 two other points of lot occupancy and the
5 non-conforming structure, because in each case they
6 use the existing building as their, as their
7 exceptional condition or uniqueness, where they're not
8 compelled to save the structure.

9 And I think if they want to use that, if
10 they want to use that as sort of a burden that they
11 have, then they have to be bound by the preservation
12 rules, to the extent that it is in fact recognizable,
13 you know, to that degree.

14 So I would think that they would have to
15 go through the designation process in order to
16 qualify. But then, in addition to that, the practical
17 difficulty arises from the addition that they want to
18 put on.

19 And they haven't said that they can't use
20 the structure as it is. So I don't, I'm not convinced
21 that they've met the test for any of the variances,
22 myself. But certainly not for density or height.
23 Anyone else want to weigh in here before we move on
24 it.

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1 MR. PARSONS: But you're okay with lot
2 occupancy?

3 CHAIRPERSON MITTEN: No, because the test,
4 their argument was the same. Their argument was,
5 well, I mean --

6 MR. PARSONS: I misunderstood you. I
7 thought you were taking one off the table.

8 CHAIRPERSON MITTEN: No, I meant to say
9 that, from my perspective, they didn't meet the test
10 for the variance on any of them.

11 MR. PARSONS: That's what you said at the
12 beginning of your remarks, but then at the end I
13 thought you were pulling one off. That's why --

14 CHAIRPERSON MITTEN: No, no.

15 MR. PARSONS: -- okay, sorry. So it's
16 your point that if they want to use the historic
17 qualities of this as a hardship, they should go get it
18 designated as a historic landmark or something of that
19 nature?

20 CHAIRPERSON MITTEN: Yes.

21 MR. PARSONS: And then they'd have to live
22 with the historic preservation issues that go with
23 that.

24 CHAIRPERSON MITTEN: Right.

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1 MR. PARSONS: All right.

2 CHAIRPERSON MITTEN: And if I could just
3 add, it's up to the Historic Preservation Review Board
4 to decide is something important enough that we
5 really, we want to preserve it and we want to impose
6 those conditions.

7 And it's not for us to say. And it was
8 all sort of anecdotal and no one, you know, they
9 didn't put it in front of --

10 MR. PARSONS: I understand.

11 CHAIRPERSON MITTEN: -- the proper body.

12 MR. PARSONS: Okay.

13 CHAIRPERSON MITTEN: Anything else? Okay.

14 What I would like to do is, I think we need to,
15 unless you want to lump them all together and I'll
16 leave it up to Mr. May, if you'd like to pull these
17 out separately.

18 We can either vote on them as a block or
19 we can vote on each variance separately, or however
20 you want to, however you would like to phrase a
21 motion. I'll leave it to you since you brought it to
22 us.

23 Our choices, I'll give you your three
24 choices. We can affirm the BZA decision. We can

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1 reverse the BZA decision. Or we can remand the case
2 to the BZA.

3 MR. MAY: Well, I --

4 CHAIRPERSON MITTEN: And actually I
5 believe there's a fourth option. Which is if we feel
6 that we don't have enough information, we can hold a
7 hearing ourselves. But I'm not sure that's the case
8 here.

9 MR. MAY: I guess I'd like to understand
10 more why you would consider all four as one. Because
11 I'm not, I personally do see some sense in allowing
12 for a, at the very least, the lot occupancy issue to
13 be affirmed.

14 Because I do see some value in, whether or
15 not it's, regardless of whether it's sufficient to
16 justify this particular case, the notion of preserving
17 that existing building and using that as some grounds
18 for exceeding what's allowed by right for this
19 particular lot, I think is, you know, stands up to a
20 certain test on its own.

21 So I'm not sure why you would, you're
22 inclined to, well, you were arguing I guess to reverse
23 all four.

24 CHAIRPERSON MITTEN: Okay, first of all

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1 these are all very much wedded together because
2 affirming on the lot occupancy doesn't get the
3 Applicant anywhere. So I don't feel super strongly
4 about it.

5 But what, my point is that in order for
6 the lot occupancy issue to even kick in, we have to
7 have an addition. Okay? Otherwise they can just go
8 on their merry way and do whatever they need, you
9 know, whatever is permitted as a matter of right.

10 So then it's a question of, okay, if you
11 believe, which I think it's tenuous to say that the
12 existing non-conforming structure in the unique thing
13 when it's not historic and someone could tear it down.

14 But if, okay, we even go to that. So
15 that's their exceptional condition. Then what's the
16 practical difficulty? The practical difficulty
17 related to lot occupancy is only an issue if they put
18 an addition on it, and they're not compelled to do
19 that.

20 There's been no case made that they have
21 to, that they have to make an addition in order to
22 make the building functional or, you know, in order to
23 be able to use it. So that's where it fails for me,
24 is the practical difficulty. There's been no showing

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1 of a practical difficulty.

2 MR. MAY: Okay, I guess I'd go along with
3 that. I was also, at the same time, thinking about,
4 well, what is it, what in effect do we grant if we
5 reverse the two and not the other two.

6 And the answer is the ability to have an
7 addition of unknown size that would required further
8 variances anyway.

9 CHAIRPERSON MITTEN: True.

10 MR. MAY: So there really is no benefit to
11 the Applicant.

12 CHAIRPERSON MITTEN: Well, I think what it
13 would do is it would tell the BZA, okay, you were
14 accurate in the issue related to lot occupancy and
15 non-conforming structure, and you were not accurate on
16 your view of the density and the height.

17 So if the Applicant were to come back with
18 a revised plan, they wouldn't have to spend a lot of
19 time revisiting the two issues that you're suggesting
20 that they actually did meet the burden on.

21 MR. MAY: Okay. All right, well I, given
22 that, all that's been said, I would be inclined to put
23 forward a motion that we reverse the BZA on all, on
24 the three variances that had been granted and the

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1 special exception. Do you need me to name them
2 specifically?

3 CHAIRPERSON MITTEN: Well, I just actually
4 want to be clear that the special exception that
5 you're referring to is the height which was then
6 elevated when you were not in attendance, I believe,
7 to being a variance. So it's four variances.

8 MR. MAY: Four variances? I thought that
9 the addition to a non-conforming structure is a
10 special exception?

11 CHAIRPERSON MITTEN: That's only for
12 residential. That's only for single-family
13 residential.

14 MR. MAY: Oh, okay. All right, so it's
15 four variances then.

16 CHAIRPERSON MITTEN: Mr. Bergstein.

17 MR. BERGSTEIN: One thing you might want
18 to note is that the variance from the non-conforming
19 regulations is sort of tied to the other variances as
20 it's presented in the order.

21 MR. MAY: Right.

22 MR. BERGSTEIN: For example, because it
23 exceeds lot occupancy, it needed a variance. But one
24 of the, because it's also non-conforming, an addition

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1 to a non-conforming is not allowed if it exceeds lot
2 occupancy.

3 So as stated in the order, both of those
4 two are tied together. In other words, the
5 non-conforming addition variance is always tied to
6 another variance.

7 CHAIRPERSON MITTEN: Okay.

8 MR. BERGSTEIN: It's not really a
9 stand-alone variance. And you'll see that in the
10 order. So that it's tied to the lot occupancy and
11 it's tied to the FAR. But for the height it wasn't
12 called out.

13 So, I just wanted to point that out.
14 That's really, because the variance is needed for the
15 one, it's also needed for the other.

16 CHAIRPERSON MITTEN: Okay, but we do have
17 four variances, right?

18 MR. BERGSTEIN: There are four variances,
19 but one is always tied to the other to some extent.
20 But, yes, there are in deed four variances. Arguably,
21 five.

22 CHAIRPERSON MITTEN: All right. So if I
23 heard you correctly, Mr. May, you moved that we
24 reverse the BZA on the variance from FAR requirements,

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1 lot occupancy, additions non-conforming structures,
2 and height?

3 MR. MAY: Correct.

4 CHAIRPERSON MITTEN: I'll second that.
5 Any further discussion?

6 (No response.)

7 CHAIRPERSON MITTEN: All those in favor,
8 please say aye.

9 (Chorus of ayes.)

10 CHAIRPERSON MITTEN: Those opposed, please
11 say no.

12 (No response.)

13 CHAIRPERSON MITTEN: Ms. Sanchez, would
14 you record the vote?

15 MS. SANCHEZ: Yes, staff would record the
16 vote, five to zero to zero. Commissioner May moving,
17 Commissioner Mitten seconding, Commissioners Hannaham,
18 Parsons and Hood in favor of reversing BZA Case Number
19 16869, which is also the Sua Sponte Case for Zoning
20 Commission 02-37.

21 CHAIRPERSON MITTEN: Thank you. Now
22 before you go, if you have just another moment, one of
23 the things that I promised the BZA that I would do,
24 because they are taking up another case in this

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1 neighborhood that has, not the same, but similar
2 issues.

3 Is I, I will not only convey what the vote
4 is, but I'd like to also convey if there's anything in
5 particular that the Zoning Commission would like the
6 BZA to have in mind going forward.

7 And, I mean, one thing I think that stands
8 out is this issue of proportionality and that the
9 relief should be proportional to the practical
10 difficulty and should also have, they should be
11 cognizant of, you know, the magnitude of what they're
12 permitting.

13 Is there anything else that any member of
14 the Commission would like to convey to the BZA as it
15 arises from this Sua Sponte?

16 MR. MAY: Well, I think the points that
17 you've raised with regard to the historic structure or
18 the purportedly historic structure as creating the
19 practical difficulty when in fact, you know, since
20 it's not a recognized historic structure, I think is
21 an issue of some import.

22 Otherwise, the case for the practical
23 difficulty falls on a, you know, the explicit language
24 of the regulations which goes to, you know, shape of

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1 the lot or narrowness, those sorts of cases.

2 Which in this case, really didn't apply.
3 And it was essentially a square structure. And even
4 though, in the hearing of the case, there were several
5 arguments that, in fact, this was a practical
6 difficulty for the sake of the irregularity of the
7 lot.

8 Several people saying that it's irregular,
9 doesn't in fact make it irregular. Even if the Office
10 of Planning happened to agree. I mean it was not, it
11 just didn't meet the burden in that area.

12 Another area where I think it's important.
13 I'm not sure what we need to say to the BZA on this,
14 but this is a building where there was, at least in
15 the way the case was presented to the BZA, there was,
16 it was a very popular project.

17 It was something that was theoretically
18 welcomed by the community, or at least in terms of
19 what we heard. And there was really not very much
20 community opposition. I think the fact that it was
21 popular, doesn't mean that it is worthy of the
22 exception.

23 And I think that we want to dispel any
24 notion that simply because something passes with the

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1 ANC and because there aren't people lining up to speak
2 against it, that it's something that should be
3 blessed.

4 CHAIRPERSON MITTEN: Well, particular on a
5 variance, where the test is pretty strict. And the
6 point that you raised about, you know, just saying
7 something doesn't make it so. Like the issue of the
8 irregular lot.

9 The other thing is, is that once you
10 establish what your uniqueness or exceptional
11 condition is, that has to directly then lead to the
12 practical difficulty and be related to the relief
13 that's being sought.

14 Not that, oh, I now have an exceptional
15 condition, I can get whatever I want or need. So
16 there has to be that relationship as well, which I'm
17 not sure was there completely either.

18 MR. MAY: I agree.

19 CHAIRPERSON MITTEN: Okay, anyone else
20 want to weigh in? Okay, thank you very much. This
21 was, I think this was a, I don't want to say it was a
22 good case to bring for Sua Sponte, because we never
23 want to have those kind of cases.

24 But I think this was one that it was

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1 important for us to catch and not allow this to go
2 forward and set a precedent and expectations in this
3 neighborhood.

4 MR. MAY: Right, and I think that's
5 especially true given the amount of activity that's
6 pending in the neighborhood.

7 CHAIRPERSON MITTEN: Yes. Thank you. And
8 we're sorry that you can't stay any longer, but --

9 MR. MAY: I'm very sorry too. I'm going
10 to write down some information for you and then I'm
11 going to go.

12 CHAIRPERSON MITTEN: All right, thank you.
13 Next we'll go to Proposed Action. We're taking this
14 case out of order. Zoning Commission Case Number
15 02-15. Which is the text related to public recreation
16 and community centers.

17 MR. BASTIDA: Madame Chairman, the staff
18 has provided you with the complete file, and request
19 that you take an action on this matter. Thank you.

20 CHAIRPERSON MITTEN: Thank you, Mr.
21 Bastida. And just so we don't lose track of it, I
22 just want everyone to keep in mind that we have a
23 request, we had emergency rule making in place that
24 expired approximately two months ago.

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1 And we basically have a request from the
2 Department of Parks and Recreation to re-establish an
3 emergency. But we'll have that discussion at the end.

4 So what we're working with at this point is the
5 advertised text.

6 And then in response to some questions
7 that were raised when we took this case up for
8 Proposed Action a couple of months ago. We have some
9 additional input from the Department of Parks and
10 Recreation and we have additional input from the
11 Office of Planning.

12 So what I'd like to do is walk through the
13 areas that have been addressed and see where we end
14 up. The first area is, relates to the definitions.
15 And we had, when we addressed this initially, we did
16 not have a definition for public recreation center or
17 community center.

18 Although, as those relate to private
19 operators, there is a distinction made in certain
20 zoning categories. They're not in the definitions,
21 but there are distinctions made in certain zoning
22 classifications for community centers as being
23 distinctly different from recreation centers or
24 recreational buildings.

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1 So what's been proposed is a blended
2 definition for public recreation and community center
3 and not making the distinction. And my concern, my
4 initial concern is whether or not that's going to
5 cause confusion and whether we need to clean up the
6 language for the private users or are the distinction
7 still, are the distinctions that we've made in the
8 past worthwhile.

9 And should we apply those to the public
10 centers. Does anyone have any comments about -- I'm
11 glad you're still here, Mr. May.

12 MR. MAY: I haven't left yet.

13 CHAIRPERSON MITTEN: Good.

14 MR. MAY: So, I'll make my feelings known
15 on this one. I think that the definition, as it has
16 been proposed for recreation centers and community
17 centers, and the lack of distinction between them is
18 the wrong path.

19 And that we need to define more clearly
20 what comprises a recreation center. And some of the
21 things that have been suggested, the language that has
22 been proposed being so broad that we really need to
23 narrow that down.

24 And I'm particular concerned about

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1 language such as, what was it, including a broad range
2 of health and wellness activities. Which, in my mind,
3 opens the door to things like health clinics or drug
4 treatment centers or things like that, that many
5 people in the community might find objectionable.

6 And I think that while those uses may be
7 appropriate in certain circumstances, we need to
8 define the allowable uses in such a way that we can
9 pinpoint that for the, you know, the standard
10 recreation center that does not include such
11 activities.

12 The word social activities also needs to
13 be clarified a bit to make certain that what we're
14 talking about is really community-related social
15 activities as opposed to social service activities.
16 That's another specific concern that I have with
17 regard to the definition.

18 So I think that it would be useful to
19 define specifically recreation centers, as something
20 that is focused on recreation, and that allows certain
21 supplement use by the community for things like public
22 meetings and what not.

23 But that some of these other potentially,
24 while certainly valuable to the community, but

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1 potentially more objectionable uses, be excluded,
2 either excluded specifically or not included and
3 included in another definition, whether it's in
4 community centers or some other definition.

5 CHAIRPERSON MITTEN: Okay, anyone else on
6 the definitions?

7 MR. HOOD: Madame Chair, on the
8 definitions, the only two things that I see here in
9 this definition that may cause a problem are health
10 and social. Not being a subject matter expert on
11 recreation, I would be in line to include and say that
12 this definition is sufficient, with the exception of
13 it being a little more specific.

14 As Commissioner May said, with what type
15 of health and what type of social activities you're
16 speaking of. I think everything else is in line, and
17 I would leave that to the subject matter experts.

18 CHAIRPERSON MITTEN: Thank you. Mr.
19 Parsons.

20 MR. PARSONS: Oh, I agree with everything
21 Mr. May said. What's happening, of course, is
22 recreation centers, as they were originally provided
23 for in this country, included what's at the end of the
24 definition, auditoriums, gymnasiums, open space,

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1 playgrounds, playing courts and so forth.

2 And what's brought to us now is an
3 argument that says, yes, but the community's needs are
4 changing. Certainly there wasn't a drug problem when
5 recreation centers were built in the _30s, _40s and
6 _50s.

7 But what's actually happening here, as we
8 learned in the hearing, is that these, these are being
9 expanded to included other community needs. And the
10 result is large buildings in what is, what was set
11 aside as recreational space is now the kind of thing
12 that you would expect in a store front in a C-1 or C-2
13 Zone, to accommodate the needs of the community.

14 A drug clinic of some kind or a health
15 care facility, that, I believe belong in that kind of
16 a circumstance. And there is no end. If you read
17 this, a broad range of health. I mean it could be a
18 resident population in here, if you let it happen, to
19 accommodate their health needs.

20 So we either have to come up with a
21 definition that deals with what kind of spaces would
22 be in these buildings? And then what kind of
23 programs.? In other words if you had a multipurpose
24 room that in the morning served the educational needs

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1 of the Senior Community and then went on to arts and
2 crafts for the kids, and maybe in the evening served
3 some other educational purpose.

4 Fine. But to establish a clinic where
5 there are examination rooms and what looks like mini
6 health clinic, that just is not a recreation center.
7 And I'd rather they be absolutely prohibited from
8 using recreational lands to expand to some 50,000
9 square feet.

10 So I don't know whether we sit here and
11 try to craft this this afternoon or not, or we ask for
12 more information. But I think I would like to pull
13 out broad terms, such as health. A broad range of
14 health and social programs.

15 I don't know what educational classes and
16 services are. Maybe using those phrases as the
17 frightening ones. I don't know if we can pin it down.

18 In other words, I see no problem, I being redundant
19 here, but no problem with educational classes if
20 they're in a room that is used on a multiple purpose
21 basis.

22 As opposed to an exclusive educational
23 facility which belongs in a school room.

24 CHAIRPERSON MITTEN: Let me ask you, do

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1 you share Mr. May's concern that we have two
2 definitions. That we have a recreation center, which
3 is, seems to be what the thrust of this is or it's
4 turning into.

5 And that we have another definition of
6 community center, and that somehow those, I mean it's
7 not necessary --

8 MR. PARSONS: We can do that, as long as
9 community centers couldn't be built on recreational
10 lands.

11 CHAIRPERSON MITTEN: Okay. I think --

12 MR. PARSONS: So I don't know why we need
13 that in this context.

14 CHAIRPERSON MITTEN: I think this arose
15 out of , I think the way this started was with the
16 notion of recreation centers. And then what we were
17 hearing was that there was a lot of things going on
18 that are, at least with what we had seen in the
19 regulations so far, is that there were aspects of what
20 we otherwise knew to be a private community center.

21 And so now we have this blending and in
22 fact the blending is what goes on. So the question
23 would be if we have these two definitions, I suspect
24 we're not intending that they be mutually exclusive.

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1 That there be the opportunity for them to
2 exist in, exist in the same facility. And I'm not
3 even sure for community center, that these things that
4 are giving you concern would be appropriate in a
5 community center.

6 The issue of a drug treatment clinic and
7 so forth. Because that should probably be considered
8 what it is, not blend it in to another kind of
9 facility. So my concern is if we have these two
10 separate definitions then it's really not being
11 responsive to what the needs are and what's really
12 being built.

13 So can we adapt a blended definition for a
14 public recreation and community center that still
15 addresses the concerns that you and Mr. May have.
16 Which would be to, I mean I agree with Mr. Hood, we
17 need some input from the parks and recreation about
18 these uses and implications of what we might be
19 extracting out.

20 But we are concerned with the land use
21 implications of these things and the things that
22 you've noted are things that are sort of,
23 traditionally have caused problems on their own. It's
24 not that they don't do well to just be allowed to go

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1 as a matter of right in a residential zone, for
2 instance, to allow a drug treatment clinic to go in.

3 So our job is to call that out and now we
4 need input from parks and rec to say, okay, how that
5 is going to be burdensome to them or not, and let's
6 work toward a solution.

7 So I would say, for the time being, that
8 we extract out those words from the definition that
9 cause you consternation, and then we'll ask for some
10 additional input in our comment period on either if we
11 go back to including those broad terms, but we have a
12 list of exclusions or something, how we could approach
13 it.

14 But for now we'll just take them out and
15 wait for feedback on another approach.

16 MR. HOOD: Madame Chair, which,
17 specifically, which ones are we talking about, words
18 we're talking about taking out. I know health --

19 CHAIRPERSON MITTEN: Health and wellness
20 and --

21 MR. HOOD: Wellness --

22 MR. PARSONS: Wellness is exercise.

23 MR. HOOD: Wellness is --

24 CHAIRPERSON MITTEN: Oh, it is, okay. Why

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1 don't we say exercise?

2 MR. HOOD: Their wellness then, that goes
3 back to what Mr. Parsons was talking about the
4 multipurpose rule. In this center you have wellness
5 centers and that's basically where seniors go and they
6 do their aerobics or their exercise or whatever during
7 the morning. So, you know, I hope we don't --

8 CHAIRPERSON MITTEN: Can we say exercise?

9 MR. HOOD: What's the difference?

10 MR. PARSONS: Wellness is a term argument.

11 CHAIRPERSON MITTEN: It is?

12 MR. HOOD: We need to come up to age.

13 MR. PARSONS: Yeah, there's one you may be
14 familiar with at American University.

15 CHAIRPERSON MITTEN: At American or George
16 Washington?

17 MR. PARSONS: Excuse me, George Washington
18 University.

19 CHAIRPERSON MITTEN: Yeah.

20 MR. PARSONS: But it's exercise equipment,
21 exercise activities and that kind of thing. I don't
22 have a problem with it.

23 CHAIRPERSON MITTEN: And wellness, okay,
24 fine, wellness is fine.

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1 MR. HOOD: Let me just say, a lot of it
2 is not even using equipment.

3 MR. MAY: Right, it could be just a
4 wellness class.

5 MR. PARSONS: It could be a swimming pool.

6 CHAIRPERSON MITTEN: Okay, so we'll take
7 out health. Can we take out, you want to take out
8 health for the time being?

9 MR. MAY: I think so. I mean, well it's
10 the broad range that also alarms me.

11 MR. PARSONS: Yes.

12 CHAIRPERSON MITTEN: Well, if we don't
13 have broad range, then we just have, we have an
14 unidentified range, so I don't know that it's any,
15 taking out the words broad range doesn't, I mean we
16 could take out the words broad range.

17 MR. MAY: Well, broad is the problem.

18 CHAIRPERSON MITTEN: Okay, a range --

19 MR. MAY: Range of wellness activities.
20 Which to me means --

21 CHAIRPERSON MITTEN: Okay.

22 MR. MAY: -- lots of different forms of
23 exercise.

24 CHAIRPERSON MITTEN: Okay. And then you,

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1 social was another one that was causing you some
2 problems.

3 MR. MAY: Right.

4 CHAIRPERSON MITTEN: Okay, anything else.

5 MR. MAY: Well, it's the service, the word
6 service appears in there as well.

7 MR. PARSONS: Educational classes and
8 services.

9 MR. HOOD: Madame Chair, I think --

10 MR. MAY: Educational services for
11 children.

12 MR. HOOD: -- are computer labs.
13 Recreation centers now, they focus those computer labs
14 in those recreation centers, because guess what?
15 That's when you get the kids to go to those recreation
16 centers so when they get there they now have computer
17 labs.

18 MR. HANNAHAM: Madame Chairman, there's
19 also the case where, I don't know how many instances
20 there are of this, but there must be several where
21 schools and rec centers are co-located.

22 And the youngsters in the adjacent school
23 use the recreation center and sometimes the spaces in
24 the school are used for recreational purposes as well.

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1 MR. MAY: That's certainly true.

2 CHAIRPERSON MITTEN: Okay. So, what's the

3 --

4 MR. HANNAHAM: So that's educational
5 really in terms of uses for young kids.

6 CHAIRPERSON MITTEN: And that would be, as
7 opposed to what Mr. Parsons was saying, that would be
8 a dedicated area not a multipurpose type of area.

9 MR. MAY: Yeah, I think when it's
10 co-located in the school, the zoning that allows the
11 school to exist, would certainly cover the
12 recreational activities. Because there is very little
13 that would occur in a recreation center that would not
14 be allowed under the use as a school.

15 Certainly that's the case where I know of
16 recreation centers that share school space.

17 MR. HANNAHAM: I know of one where the rec
18 actually gave up the land for the school to be built.

19 MR. MAY: Right. And that's probably
20 going to happen more often.

21 MR. HANNAHAM: There was a kind of
22 cooperative arrangement between them.

23 MR. MAY: Right, but again, I think the
24 school use encompasses what would occur in recreation

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1 center, as opposed to the other way around.

2 CHAIRPERSON MITTEN: Right. So where does
3 that leave us?

4 MR. HANNAHAM: Are we still concerned
5 about social?

6 MR. MAY: It's the services for children
7 --

8 CHAIRPERSON MITTEN: For the time being
9 we're taking social out.

10 MR. HANNAHAM: We're taking social out,
11 okay.

12 CHAIRPERSON MITTEN: It's the services
13 aspect of it?

14 MR. MAY: Well, it's, the way it's phrased
15 maybe is I think, cultural and educational classes and
16 services. So we have cultural, conceivably we have
17 cultural services for children. I'm not sure what
18 that means.

19 MR. HANNAHAM: Well, you know, you can
20 take them to a museum --

21 MR. MAY: Children, adults and seniors
22 actually --

23 MR. HANNAHAM: -- and use that as a
24 staging point.

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1 CHAIRPERSON MITTEN: Let's do this. Let's
2 do this. We're taking out the things that cause us
3 the most heartache. And then we'll ask for some more
4 clarification on what does this mean exactly? And we
5 might end up making some specific exclusions.

6 But for the time being, we'll leave that
7 language in. How does that sound?

8 MR. MAY: Okay. All right.

9 CHAIRPERSON MITTEN: Okay. So that's, and
10 I think we do want some feedback on, you know, some of
11 the specific uses that we may be either sweeping out
12 and we should be more careful, more, not sweeping
13 broad classes uses out but just picking out the ones
14 that are more offensive.

15 So, we'll do that with the definition, if
16 everyone is comfortable.

17 MR. PARSONS: Carol, continue on.

18 CHAIRPERSON MITTEN: Okay, sir.

19 MR. HOOD: Are we sure what's coming out?
20 I'm not sure now. I want to make sure.

21 CHAIRPERSON MITTEN: Well, just a second.

22 MR. PARSONS: I want to continue on to
23 what can be contained in these.

24 CHAIRPERSON MITTEN: Okay.

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1 MR. PARSONS: May include, but not be
2 limited to, I'd like to remove.

3 CHAIRPERSON MITTEN: Okay.

4 MR. PARSONS: Auditorium, gymnasium,
5 meeting space, open space, I'd like to add
6 multipurpose rooms.

7 CHAIRPERSON MITTEN: Okay, so it's may
8 include auditorium --

9 MR. PARSONS: Multipurpose rooms --

10 CHAIRPERSON MITTEN: Okay.

11 MR. PARSONS: -- auditorium, gymnasium,
12 meeting space, open space, playground, playing court,
13 playing fields, swimming pool. It's the but, not
14 limited to, is what's getting us into trouble, I
15 think.

16 CHAIRPERSON MITTEN: Okay.

17 MR. HANNAHAM: That's like open-ended.

18 CHAIRPERSON MITTEN: Right. Okay, so
19 here's what we have. A public recreation or community
20 center is an area placed structure or other facility
21 under the jurisdiction of a public agency that is used
22 for community recreation activities.

23 Maybe we should say is primarily, because
24 some of these other things really don't, really are

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1 not recreation, per se. Do you want to say primarily?

2 MR. PARSONS: Well, we're defining
3 recreation.

4 CHAIRPERSON MITTEN: Okay, fine. A public
5 recreation or community center may provide a range of
6 wellness, cultural, arts and crafts, educational
7 classes and services, and may include multipurpose
8 rooms, auditorium, gymnasium, meeting space, open
9 space, playground, playing court, playing field and
10 swimming pool.

11 MR. BERGSTEIN: Madame Chair, there really
12 seems to be a modifier missing in there somewhere. It
13 seems to me that educational classes and services go
14 together, and there may need to be an and before
15 educational.

16 CHAIRPERSON MITTEN: Oh yeah.

17 MR. BERGSTEIN: In a way, do you see what
18 I'm saying? Educational classes and services doesn't,
19 services doesn't modify crafts, arts, cultural,
20 social.

21 CHAIRPERSON MITTEN: Right. Yeah, you're
22 right. Okay, so it should say wellness --

23 MR. BERGSTEIN: And so are we talking
24 about, I just want to, if I could, suggest, are they

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1 talking about social, cultural, arts and crafts
2 activities and services or services?

3 CHAIRPERSON MITTEN: I think what it
4 should be, if I was going to do it the long way, would
5 be wellness activities, cultural activities, arts and
6 crafts activities, educational classes and services.
7 Is that what everybody thinks?

8 So we can re-word that to say --

9 MR. PARSONS: Services would be tutorial
10 rather than a class.

11 CHAIRPERSON MITTEN: Perhaps, or a
12 computer lab where you wouldn't necessarily be --

13 MR. HANNAHAM: Or even be on computers.
14 You know, computers are becoming obsolete.

15 CHAIRPERSON MITTEN: Don't say that. No,
16 you're right. These are just examples. These are not
17 meant to be definitive.

18 MR. HANNAHAM: Well, beyond this --

19 MR. HOOD: And I think the language we're
20 proposing that leaves that open for those obsolete
21 computers.

22 CHAIRPERSON MITTEN: So what it will say
23 is wellness, cultural and arts and crafts activities
24 and educational classes and services.

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1 MR. MAY: Yes.

2 CHAIRPERSON MITTEN: Okay, can we move on
3 to, and then we'll vote on everything at the end. But
4 if we have a consensus about the definition we can
5 move on.

6 MR. HANNAHAM: Good.

7 CHAIRPERSON MITTEN: Okay. The next area
8 was the issue of lot occupancy. And Parks and Rec had
9 responded to our concern with a, with a modification
10 that they were supporting of 40 percent lot occupancy
11 limitation in residential zones, which would be
12 anything R-1 through R5E.

13 And then 60 percent lot occupancy in
14 commercial zones. It was originally proposed to be 60
15 percent across the board. Then, and anything else
16 would be a special exception.

17 And then the Office of, I guess that's
18 generally consistent with what the Office of Planning
19 was saying as well.

20 MR. PARSONS: Well, I find this troubling.
21 There's a chart attached to the OP Report, which
22 shows most of the lot occupancy at this point is
23 three, seven, eight and a half, maybe up to 21.

24 One exception at 29, and of course the

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1 natatorium up to 52. But I don't see a reason to go
2 past 20 percent in this lot occupancy just to, based
3 on this chart here of these various projects.

4 And then a special exception maybe up to
5 25 percent. I don't know what you think about that,
6 but I found this very informative attached to the
7 December 2nd Memorandum.

8 MR. MAY: I would agree with that. Not
9 just on the practical matter in terms of what's been
10 shown to us, but also as a matter of principal. I
11 don't think that we want to have recreation centers
12 that are, I mean except in certain circumstances like
13 the natatorium where it's a, it is a specific
14 single-use building at an urban site.

15 But I think it, you know, generally
16 speaking recreation centers should be located with
17 fields, ample fields. Playing fields, outdoor
18 recreation areas attached to them. And that we should
19 not be encouraging densities as high as 40 percent.

20 I think that, you know, 20 percent lot
21 occupancy should be more than enough. And, in fact,
22 even that is, frankly, disturbingly high in
23 circumstances given that, you know, what has existed
24 in many of these areas where the buildings are being

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1 rebuilt was five percent or less.

2 And I don't think we want to, you know,
3 open the door to a 40 percent lot occupancy. I think
4 20 percent, with a special exception to 25, I think is
5 fine. I would also say that, I'm going to wrap up all
6 my comments since I do have to go now.

7 Is that the height limitation should be
8 the same as the lower end of the residential spectrum,
9 and that is 40 feet, rather than 45. And that it
10 should apply across the board to the residential
11 districts, the commercial districts and the mixed use
12 districts.

13 MR. PARSONS: The height or the lot
14 occupancy.

15 MR. MAY: All. I think it's more
16 important in high density residential areas and mixed
17 use areas that the density be low in the recreation
18 areas. I mean this is, it's sort of basic urban
19 planning principals. You build the buildings high so
20 you have more open space around you.

21 CHAIRPERSON MITTEN: And I just want to be
22 sure I heard you. You said residential, mixed use and
23 commercial?

24 MR. MAY: Yes.

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1 CHAIRPERSON MITTEN: That the 20 percent

2 --

3 MR. MAY: Twenty percent with a special
4 exception increase to 25 and 40 percent, I'm sorry, 40
5 feet height limitation. And that's what I would
6 recommend.

7 CHAIRPERSON MITTEN: Okay.

8 MR. HOOD: Madame Chair, may I ask
9 Commissioner May something before he leaves? In your
10 analysis, did you take into consideration that
11 nowadays, and I just want to make sure when you're
12 going over that 20 percent, you mentioned outdoor.

13 Most facilities now are indoor. They are
14 trying to make them indoor. For example of the
15 weather elements in the winter time. You don't see
16 many kids or many people playing basketball outside in
17 the winter.

18 So I think that this lot occupancy is
19 relatively low considering we're talking about
20 building indoor gymnasiums and such facilities that
21 you can do indoor as opposed to outdoor.

22 MR. MAY: No, I understand that. I think
23 that's where the practical experience of the chart
24 that we see is relevant. Because I think that even

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1 though circumstances where, you know, there are more
2 significant buildings, the relative lot occupancy is
3 fairly small.

4 And again, I mean I guess I would be
5 willing to listen to, you know, a practical argument
6 to the contrary that perhaps the special exception
7 limit should be higher. But when it gets above, we're
8 talking about what should be allowed as a matter of
9 right.

10 And I think that that, when it gets above
11 a certain threshold. When you're talking about
12 building gymnasiums, then I think that we're venturing
13 into special exception territory, as we would be with
14 constructing a school in a residential area.

15 MR. HOOD: I think that was my point. I'm
16 glad that you're open to listen to that special
17 exception above the 25 percent. Because I believe
18 that, but then again, I would like to refer that,
19 Madame Chair, back to the subject matter experts.

20 Even though I do see the chart,
21 Commissioner Parsons, in front of me. But I want to
22 make sure that they understand exactly what we're
23 getting ready to do.

24 CHAIRPERSON MITTEN: Well, and they'll

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1 have ample opportunity during the comment period. And
2 we're actually encouraging that, we're encouraging
3 feedback. Mr. Hannaham.

4 MR. HANNAHAM: So that means that you, in
5 effect, would grandfather in places like Takoma and
6 the natatorium, right?

7 CHAIRPERSON MITTEN: Yes, right.

8 MR. HANNAHAM: They are already high.

9 MR. MAY: Yes.

10 CHAIRPERSON MITTEN: Now, if I could just
11 ask, is, John, you had proposed 20 percent lot
12 occupancy and then up to 25 percent with a special
13 exception. And I did hear what Peter said.

14 MR. PARSONS: I see the bidding is going
15 up.

16 CHAIRPERSON MITTEN: No, no, I was just
17 going to say, I was just going to say did you want to
18 make any distinction on what the upper limit for the
19 special exception should be in a commercial zone?

20 MR. PARSONS: Well, I feel just Peter
21 does.

22 CHAIRPERSON MITTEN: Okay.

23 MR. PARSONS: It should be low.

24 CHAIRPERSON MITTEN: Okay.

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1 MR. PARSONS: But I won't go there.

2 CHAIRPERSON MITTEN: No, you guys are very
3 convincing. Okay. So, I can see we might need to
4 vote on some of these things individually.

5 MR. MAY: I have to go, but I've given my
6 proxy.

7 CHAIRPERSON MITTEN: Okay, great. Thank
8 you. Absentee vote, right. All right, so we, we'll
9 vote, I think we'll need to vote these things
10 separately. Unless we can get some consensus.

11 MR. HOOD: I mean, it's going to go back
12 out for comment. I would go along with the 25
13 percent, but we'll have a chance to increase it at a
14 later date. I mean I don't think that will be --

15 (Laughter.)

16 MR. PARSONS: Always.

17 CHAIRPERSON MITTEN: We'll remain
18 open-minded throughout the process, Mr. Hood.

19 MR. HOOD: I sure hope so.

20 CHAIRPERSON MITTEN: Okay, so we'll be at,
21 at least for the proposed 20 percent lot occupancy
22 limitation, up to 25 percent with a special exception
23 and a 40 foot height limit. And then we're going to
24 get this on.

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1 MR. PARSONS: And then the definitions.

2 CHAIRPERSON MITTEN: Oh, and the
3 definitions. Yeah, I'm not done yet.

4 MR. PARSONS: I thought you were going to
5 make a motion.

6 CHAIRPERSON MITTEN: No, no, we still have
7 a couple more. The next is the loading. And the
8 Office of Planning has just, in their supplemental
9 report, they've given us the recommendations of DDOT
10 that had, they had already shared with us.

11 And we don't have anything in the
12 alternative proposed. So I would think that these
13 would be adequate and not particularly onerous. Does
14 anyone have any different thoughts on loading?

15 All right. And then we have the parking
16 standards. And it's interesting, I'm glad for the
17 clarification from the Office of Planning, because
18 Parks and Rec had said that the standard that they
19 were applying was the recreation center standard.

20 Notwithstanding the fact that they
21 actually have this blend of uses and the recreation
22 center standards are based on the size of the
23 structure. One space per 2,000 square feet.

24 When the community center, which is the

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1 more, actually more considered to be a place of
2 assembly, that has a parking standard based on the
3 capacity. And it's related to the number of seats.

4 And I think that's what the
5 recommendations from the Office of Planning are
6 actually trying to capture when you have those
7 identified areas where you, where you have large
8 numbers of seats, that we would have this additional
9 parking space requirement.

10 And I did have a clarification question.
11 Ms. Ray, if you could answer this for me. In the, on
12 Page 6 of the, of your supplemental report, the little
13 chart and it's talking about the proposed parking
14 requirements for bleachers and then ball fields and
15 tennis courts and so forth.

16 Is that meant to be only for public
17 recreation and community centers, or is that meant to
18 be across the board for wherever those might be
19 present in other uses as well?

20 MS. RAY: No, we were, we were only
21 referring to the public recreation and community
22 centers.

23 CHAIRPERSON MITTEN: Okay, I just wanted
24 to be sure I understood that. All right. Anyone have

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1 comments on the, these additional parking
2 requirements. And the chart at the bottom, I think,
3 shows how it would actually set a very good minimum
4 standard.

5 And then in certain cases if Parks and Rec
6 chose to exceed them, as they would have in these two
7 cases that are used in the example, that would be all
8 the better. Everyone all right about the --

9 MR. PARSONS: Yes.

10 MR. HANNAHAM: That seems to me that's
11 sort of hard to control. There are instances where
12 there are kinds of, there are events that might bring
13 in large numbers of people that would completely swamp
14 the idea of seating, additional seating or bleachers.

15 I could envision, I don't know, a
16 tournament or final event in some sort of competition
17 where you really wouldn't be able to predict the
18 number of people that might attend. And it might have
19 a tremendous impact on the surrounding residential
20 neighborhood.

21 CHAIRPERSON MITTEN: True. And so here's
22 the question is in, if we looked and used the standard
23 for community centers. The standard there for
24 parking, just bear with me, I had it written down here

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1 some place.

2 Can you hand me that Ordinance. I just
3 want to make sure I say the right, use the right
4 words. Oh, I got. I'm sorry, I got one down here.
5 For a community center, among other places of public
6 assembly, it's one, the requirement is one space for
7 each ten seats of occupancy capacity, and that's where
8 the seats are fixed.

9 And it goes on from there. And then each,
10 oh, here it is. And if you don't have fixed seats,
11 then it's each seven square feet of usable seating, of
12 each seven square feet usable for seating, yeah. It's
13 a seven square foot area usable for seating shall be
14 considered one seat.

15 So those areas where there would be
16 designated seating, assembly, you know, not the entire
17 building, but where you could actually have a large
18 congregation of people, that's how they, that's how
19 they set the parking requirement.

20 Now those are areas of public assembly.
21 So on the one hand, you could have a more strict
22 standard like that. I think what makes it onerous and
23 undesirable for these kinds of uses is that it's
24 infrequent.

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1 So you don't want to have a whole lot of
2 parking that you only use occasionally. So I don't
3 know where to go with that. But that's sort of,
4 there's a way to deal with it, but then you create
5 this other situation that's undesirable.

6 MR. HANNAHAM: Well, that's up to the
7 managers, you know the Recreation and Parks people who
8 know the situation on the ground. And they know the
9 likelihood of these kinds of population problems and
10 can help to work with neighborhoods to offset.

11 Because the neighborhood areas are going
12 to have to take the spillage and take the pressure.

13 CHAIRPERSON MITTEN: Right. I mean I
14 guess we have to have a certain amount of faith in
15 Parks and Rec that they wouldn't plan to have an event
16 that would draw, you know, a lot of people to a
17 neighborhood and not have some plan for how you were
18 going to deal with the cars that would come in and
19 where they would park.

20 MR. HANNAHAM: Right, and working with the
21 people in the community who would like to see their
22 driveways open during these events.

23 CHAIRPERSON MITTEN: Right. Which
24 actually brings us to the final point. Thank you, Mr.

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1 Hood, for letting me use that. Which are the
2 recommended conditions that would trigger a special
3 exception.

4 And we've touched on some of them, but
5 what I wanted to just make sure everybody is
6 comfortable with is the notion that, we had talked
7 about and we have responses from Parks and Rec and
8 Office of Planning on whether or not there should be
9 some kind of overall size restriction.

10 And the thought was that, oh well, we have
11 these FAR restrictions in place and lot occupancy
12 restrictions which are now, will be even more strict.

13 But what it doesn't address is if you have a very
14 large facility.

15 It's just large. I mean some of these in
16 the chart, given the amount of acreage involved if you
17 went up to 20 percent lot occupancy, you'd have an
18 immense structure. So then the question is, the
19 reason that these are being permitted as a matter of
20 right is that they're meant to be community serving.

21 So then when does the overall size of the
22 structure get to be so large that you're more likely
23 to bring in cars and so forth from outside. And that
24 the overall size of the structure does suggest that

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1 you would be having more of these large, public
2 functions.

3 And should there be an overall size that
4 triggers special exception review on its face. And I
5 think there should be. Because it really, when it
6 gets to be a certain size it's not a
7 community-oriented facility, it's not primarily a
8 community-oriented facility anymore.

9 And I would suggest that that size would
10 be 50,000 square feet. And we look at the chart
11 again, and the only building that would not conform to
12 that is the Takoma Rec Center.

13 And I think the nature of that rec center
14 would suggest that, in fact, they will be drawing from
15 outside their immediate area.

16 MR. HOOD: Madame Chair, I'm really not, I
17 didn't follow your last statement.

18 CHAIRPERSON MITTEN: Okay.

19 MR. HOOD: You were saying the Takoma Rec
20 Center was --

21 CHAIRPERSON MITTEN: Fifty-one thousand.

22 MR. HOOD: Okay.

23 CHAIRPERSON MITTEN: It's the only one in
24 the chart that's over 50,000 square feet of building

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1 area.

2 MR. HOOD: Now this list that we asked for
3 from the Department of Parks and Rec was a list of
4 recreation centers that were already in the pipeline,
5 right?

6 CHAIRPERSON MITTEN: Yes.

7 MR. HOOD: This is what this list
8 reflects?

9 CHAIRPERSON MITTEN: Right.

10 MR. HOOD: What happens to those centers
11 that may not be close to being in the pipeline that
12 have already, the legwork has started and now we're
13 getting ready to make all these cutoffs.

14 But I guess when they have a comment
15 period they will let us know. Because I just see this
16 as just really narrowing the scope and closing the
17 door to recreation. Recreation in the suburbs has
18 changed tremendously.

19 And that's why most of us are going to the
20 suburbs. We're going to be out there, you know, in
21 other people's neighborhoods and, you know, they're
22 going to say well use your own rec center.

23 But we can't because this Commission, we
24 have limited ourselves to the point that would drive

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1 people out of the city.

2 CHAIRPERSON MITTEN: Well, I think
3 there's, we just have to keep in mind that we are
4 setting up the mechanism for what is a matter of right
5 and what is special exception, not that we're closing
6 the door on anything.

7 We're saying, you know, you get to have
8 one of these facilities of a certain size is it's not
9 exclusively about program any more. Because that's
10 what Parks and Rec does and they do that very well, in
11 terms of what does the community want in terms of
12 program.

13 But there's other land use issues that are
14 for us to address and for the BZA to address. And
15 when we see that a facility has, you know, certain
16 characteristics or is of such a size that it really
17 should be scrutinized in a special exception process,
18 that doesn't close the door.

19 That just says, you know, you've reached a
20 level that requires additional scrutiny for other
21 things.

22 MR. HOOD: Yeah, I agree, Madame Chair. I
23 just want to make sure that we don't close the door.
24 And unfortunately I'm not the subject matter expert,

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1 again, like I said, during the comment period.

2 But let me just, when I sit here and look
3 at what we're doing, I think back to as a child I had
4 to play outside in the snow, I had to basketball in
5 the snow. I mean, I'm sure people have done that. I
6 would have rather played on the inside.

7 We were not afforded that opportunity
8 growing up here in the city.

9 CHAIRPERSON MITTEN: I didn't know that
10 the ball would bounce --

11 MR. PARSONS: I think 30,000.

12 CHAIRPERSON MITTEN: Thirty thousand?

13 MR. PARSONS: Well, I'm just reviewing
14 again this chart that was provided. Most of these are
15 down under 20,000. And it's just, you've only got two
16 that really exceed 25,000. Fifty is, well that's an
17 acre. That's a big building.

18 CHAIRPERSON MITTEN: It's not necessarily
19 all on one level, but, I know.

20 MR. PARSONS: Well, maybe. So I, again,
21 I'm trying to search out a dialogue with a comment
22 period.

23 CHAIRPERSON MITTEN: Okay.

24 MR. PARSONS: I would think 30 would feel

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1 better to me.

2 CHAIRPERSON MITTEN: Okay.

3 MR. PARSONS: As long it includes a
4 gymnasium.

5 MR. HOOD: Madame Chair, you said 50, and
6 50 sounds better to me for a comment period.

7 CHAIRPERSON MITTEN: How about we say 40,
8 and then we'll just see what we get?

9 MR. HOOD: Well, we just need to see what
10 Mr. Hannaham has to say.

11 CHAIRPERSON MITTEN: What do you like Mr.
12 Hannaham?

13 MR. HANNAHAM: Are you talking about
14 square footage?

15 CHAIRPERSON MITTEN: Just overall square
16 footage for a facility that would trigger special
17 exception review. And don't say anything except 30,
18 40 or 50. We're trying to narrow it down.

19 MR. HANNAHAM: Thirty-five.

20 (Laughter.)

21 MR. PARSONS: You violated the rule.

22 MR. HANNAHAM: Well, I mean I could live
23 with 30 or 40, frankly, that's the reason why I said
24 35.

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1 CHAIRPERSON MITTEN: Okay.

2 MR. HANNAHAM: Fifty, 50 is a little
3 generous.

4 CHAIRPERSON MITTEN: Okay.

5 MR. HANNAHAM: I think it's a little
6 impractical.

7 MR. PARSONS: All right, 40.

8 CHAIRPERSON MITTEN: Okay, I'm for 40 now.

9 MR. HOOD: Well, obviously I have no other
10 choice.

11 CHAIRPERSON MITTEN: Okay.

12 MR. PARSONS: Persuasive powers.

13 MR. HANNAHAM: Where do we stand on
14 consensus, then?

15 CHAIRPERSON MITTEN: We're at 40, then.
16 You got it down to 40. That was good.

17 MR. HOOD: I'm not going to say anything
18 else, because it will go down to 30.

19 CHAIRPERSON MITTEN: I know, I'm going to
20 40 because Mr. Hood was so convincing. No, you were,
21 he was, where were you at.

22 MR. PARSONS: I was at 60.

23 MR. HOOD: Actually, I was with you,
24 Madame Chair, you said 50.

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1 CHAIRPERSON MITTEN: Oh, okay.

2 MR. HOOD: And that's where I was.

3 CHAIRPERSON MITTEN: Okay. I lost track
4 of where I was.

5 MR. HANNAHAM: Now these tables don't
6 represent all of the recreation centers that are
7 pending --

8 CHAIRPERSON MITTEN: No, these are the
9 current list of projects.

10 MR. HANNAHAM: Just the current projects?

11 CHAIRPERSON MITTEN: Right.

12 MR. HANNAHAM: But there will be more down
13 the pike, won't there?

14 CHAIRPERSON MITTEN: Presumably.

15 MR. PARSONS: Yes.

16 MR. HANNAHAM: Then we'll see.

17 CHAIRPERSON MITTEN: Okay, we'll see what
18 kind of comments we get at 40. All right, so, this is
19 what we have before us. Is that we would amend our
20 the advertised text. I'm not going to give a lot of
21 specific language.

22 But I know that Corporation Counsel will
23 help us nail all this down. The definition, as I read
24 it earlier, when we reached consensus where we would

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1 leave out certain words and add multipurpose rooms.

2 The lot occupancy limitation would be
3 reduced to 20 percent in all zones as a matter of
4 right with a limit, through special exception, of 25
5 percent. The height limit would be 40 feet in all
6 zones.

7 The loading requirements will be as
8 proposed by the Office of Planning on Page 5 of their
9 December 2nd Memo. The parking standards will be as
10 proposed on the upper chart on Page 6 of the Office of
11 Planning Report.

12 And this chart would apply only to public
13 recreation and community centers. And on the
14 provisions that would trigger special exception, I
15 already articulated the lot occupancy. The FAR, we
16 didn't talk specifically about this, but the FAR
17 triggers, in the chart on Page 7, if anyone has
18 anything they want to change relative to that.

19 The relief from the parking requirements
20 would be a special exception as opposed to a variance
21 for the higher impact uses. And then we would add to
22 that, that the gross, I think we need to say gross
23 building area.

24 Because even if they build something below

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1 grade, that the gross building area, greater than
2 40,000 square feet, would also trigger special
3 exception review. Is there anything that I missed or
4 any comments.

5 MR. HOOD: Madame Chair, I just wanted us
6 to maybe reconsider the 20 percent and then special
7 exception review to 25 percent. If we're going to
8 require special exceptions, why don't we at least go
9 to 50 percent or 40 percent.

10 I mean why are we just, I mean that's not
11 much to have to come in and ask for, from 20 to 25
12 percent.

13 CHAIRPERSON MITTEN: I can see your point.
14 Does anyone, Mr. Parsons, do you want to comment on
15 that, since you proposed it?

16 MR. PARSONS: I would --

17 CHAIRPERSON MITTEN: Would you turn on
18 your mic?

19 MR. PARSONS: Thanks. I would, my
20 proposal was based on the existing lot occupancy of
21 these buildings to urge them to take more open space.

22 I just can't go there. In other words, they don't
23 need 30 percent.

24 They don't 40 or 50 percent. And to urge

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1 more open space to be removed from the city to
2 accommodate other, what, social needs, to me these
3 should be accommodated in rented commercial space.

4 CHAIRPERSON MITTEN: Let me try an
5 alternative and see if this would make you anymore
6 comfortable in easing the standard, whether it would
7 go up to what Mr. Hood is suggesting or not.

8 But if we added, in the case of the lot
9 occupancy issue, if we added to the special exception
10 test, as we do sometimes, that one of the issues they
11 must address is in exceeding the 20 percent, they must
12 address how the increase is consistent with their
13 purpose of, you know, of, their specific purpose of
14 promoting recreation in the city, or something like
15 that.

16 Because they're suggesting, Parks and Rec
17 was suggesting to us, no, we don't need any of these
18 kinds of restrictions because, look, hey, that's what
19 we do. We, you know, we're supposed to, it's, let me
20 find the exact language.

21 I'm not finding it. But basically when
22 they were suggesting that we don't need to address
23 some of the issues that we, in fact, are addressing,
24 that it's part of their review process. It's part of

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1 their mandate to protect against, you know,
2 encroachment on the open spaces and so on.

3 So if we added sort of a standard to say,
4 okay, if you're going to go up to 30 percent lot
5 occupancy or whatever it is, how is that consistent
6 with your purpose. So it's a question of defining
7 that purpose in such a way that would make you
8 comfortable that that kind of scrutiny that's
9 necessary.

10 MR. PARSONS: I think I found it on Page
11 4, second paragraph.

12 CHAIRPERSON MITTEN: Oh, okay.

13 MR. PARSONS: Please be aware.

14 CHAIRPERSON MITTEN: Yes, right.

15 MR. PARSONS: So that should be kind of a
16 threshold test.

17 CHAIRPERSON MITTEN: Right. So the, so
18 the additional standard would be then that they would
19 have to show how the special exception in that case
20 was consistent with the Department's policy of
21 preserving open space.

22 MR. PARSONS: Okay. Thirty percent.

23 CHAIRPERSON MITTEN: I'm going to side
24 with Mr. Hood on this one. I think 40 percent, which

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1 is the, that's in the, all the underlying zones. That
2 would be the minimum lot occupancy restriction.
3 That's the most restricted.

4 MR. PARSONS: Yeah, but comparing it to a
5 residential house lot, we're talking about a park of
6 15 acres here.

7 CHAIRPERSON MITTEN: I know.

8 MR. PARSONS: And suddenly they can
9 occupancy 40 percent of it with buildings.

10 CHAIRPERSON MITTEN: Not without proving
11 how it's, you don't have confidence?

12 MR. PARSONS: No. It's saying it's okay.

13 MR. HANNAHAM: I have problems in visiting
14 any kind of a structure in a park that would go up to
15 40 percent lot occupancy.

16 CHAIRPERSON MITTEN: Okay.

17 MR. HANNAHAM: I mean we're talking maybe
18 a baseball stadium or something like that?

19 MR. PARSONS: Yeah.

20 MR. HANNAHAM: By the way, how do baseball
21 stadiums come into this? That's not the Parks and
22 Rec. Would that be something we'd have to be thinking
23 about in the future?

24 CHAIRPERSON MITTEN: I think we probably

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1 should.

2 MR. HANNAHAM: I mean if we get a baseball
3 team.

4 CHAIRPERSON MITTEN: I think we probably
5 should.

6 MR. HANNAHAM: Okay.

7 MR. PARSONS: Fortunately, none of the
8 sites is being looked at for that purpose. Although
9 Kennedy Stadium is on park land, by an act of
10 Congress, by people more wise than us. No, have more
11 wisdom than us, excuse me.

12 CHAIRPERSON MITTEN: Okay.

13 MR. HANNAHAM: Well, they usually have the
14 last word anyway.

15 CHAIRPERSON MITTEN: Here's the, here's
16 another twist. Which is that we, in setting these
17 requirements what we don't know is for all the
18 existing centers that might exist, for all the, okay,
19 be redundant why don't you.

20 For all the centers that exist now, the
21 recreation and community centers that exist now, we
22 don't know what this does, this lot occupancy
23 limitation does. And perhaps we're not as concerned
24 about it, but what we don't know is how many of them,

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1 if they were to expand, would need to come in for
2 variances.

3 And maybe that's fine, if you know, if
4 they're at that point. I'm just throwing it out
5 there. We're basing what we're doing on the existing
6 projects. We don't know the whole universe.

7 Okay, I've got 40 percent and I've got 30
8 percent with the addition of, actually we should make
9 the addition probably, in any case.

10 MR. HOOD: I think it was 50 percent,
11 Madame Chair.

12 CHAIRPERSON MITTEN: Oh, you said 50, oh,
13 I'm sorry. Oh, yeah, 40 percent was me.

14 MR. PARSONS: He's trying to get his
15 gymnasium.

16 CHAIRPERSON MITTEN: Okay, see if this
17 does anything for anybody. That in addition to the
18 test that the Department would have to show how the
19 special exception for increasing the lot occupancy to
20 whatever level it was, would have to be consistent
21 with this policy of preserving open space.

22 That they must also prove that the
23 facility is the minimum size necessary to accomplish
24 its mission. Which is not unlike some of the stuff

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1 that was being proposed with some other uses that,
2 that's not an entirely foreign concept. But the idea
3 is that they're not overbuilding.

4 MR. PARSONS: To me that's a throw away.

5 CHAIRPERSON MITTEN: Okay.

6 MR. PARSONS: It really is. No matter
7 what I was building, I would be fulfilling my mission,
8 I would think. I wouldn't be able to justify the
9 expenditures to the City Council.

10 CHAIRPERSON MITTEN: Well, that's a good
11 point.

12 MR. PARSONS: And we may need three
13 gymnasiums in this particular area of the city.

14 CHAIRPERSON MITTEN: Right. Okay, so
15 we're at 30 and 50, right?

16 MR. PARSONS: Yes.

17 CHAIRPERSON MITTEN: Mr. Hannaham, what do
18 you like?

19 MR. HANNAHAM: Are you talking 30 and 50
20 in what, what category?

21 CHAIRPERSON MITTEN: This is the threshold
22 from, we have, what we have so far is that we have 20
23 percent lot occupancy as a matter of right. And then
24 this would be the maximum that you, the maximum lot

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1 occupancy you could get with a special exception.

2 And above that you'd be into a variance.

3 So the question would be do you want it to go from 20
4 percent to 30 percent, or 20 percent to 50 percent?

5 MR. HANNAHAM: Twenty-five percent.

6 MR. PARSONS: That's where we were.

7 CHAIRPERSON MITTEN: Or 25 percent. You
8 like 25?

9 MR. HANNAHAM: Yeah, I like 25 percent.

10 CHAIRPERSON MITTEN: And you like 25
11 because that was your original.

12 MR. PARSONS: Yes. And Mr. May might have
13 liked 25 percent.

14 (Laughter.

15 MR. PARSONS: Because he was headed out
16 the door at about that time.

17 CHAIRPERSON MITTEN: Let's advertise 25
18 percent and then we'll --

19 MR. HOOD: You know what I'm afraid about
20 advertising 25 percent, especially when it's coming
21 from this Commission, that it won't never be changed.

22 Even if we said 30. So I'm giving us a chance to put
23 a little more out there and let's kind of see where it
24 goes.

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1 Even if we took it to 30 percent. I think
2 25 is just too close to 20, and well, I'm not going to
3 say that because I basically said the other five
4 percent, people are going to build it regardless.

5 CHAIRPERSON MITTEN: I know you guys like
6 25, but we need to advertise something and we need to
7 come to some agreement. Thirty?

8 MR. HOOD: Let's advertise 30 then.

9 CHAIRPERSON MITTEN: He's down to 30.
10 Didn't you just say 30, you'd be willing, can't we get
11 --

12 MR. HOOD: I said 30, but I didn't mean
13 30. I just used that for sake of discussion.

14 (Laughter.)

15 CHAIRPERSON MITTEN: It's going to be 30.
16 Okay, 30?

17 MR. PARSONS: Thirty.

18 CHAIRPERSON MITTEN: Thirty, 30? Okay,
19 30. Okay, now those would be all of the, all of the
20 modifications, amendments that we would make to the
21 text that we advertised. Is there anything else that
22 anyone would like to raise?

23 MR. PARSONS: I'd like to second your
24 motion.

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1 CHAIRPERSON MITTEN: You'd like to second,
2 yeah, yes, thank you. Okay, we will treat that as a
3 motion and that we have a second. Is there any
4 further discussion.

5 MR. HOOD: Okay, Madame Chair, what are we
6 voting on?

7 CHAIRPERSON MITTEN: We are voting on the
8 manner in which we will modify the advertised text.
9 We're going to modify the definition or we're going to
10 have a definition. The lot occupancy, that's what we
11 were just talking about.

12 Height. What the triggers are for special
13 exception in terms of density, lot occupancy, overall
14 size and so forth. We have the loading requirements
15 and the parking requirements.

16 MR. HOOD: Madame Chair, I would, I will
17 vote in favor this time of moving forward. But I'm
18 hoping that we can make some changes. Because this
19 Commissioner does not want to be know as the No
20 Recreation Commissioner. That's the way I look at it.
21 Thank you.

22 CHAIRPERSON MITTEN: And none of us want
23 to be known as the No Recreation Commissioner.

24 MR. HOOD: Our numbers sure don't reflect

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1 it.

2 CHAIRPERSON MITTEN: Okay, and we can
3 break these out individually. I mean if we can't
4 reach consensus, we'll break them out individually and
5 vote on them.

6 MR. HOOD: Well, I think, Madame Chair, at
7 this point, from hearing the discussion, it really
8 doesn't make any sense to do that.

9 CHAIRPERSON MITTEN: No, when we take
10 final action.

11 MR. HOOD: Yeah, when we take final
12 action, hopefully. And hopefully we can get some
13 comments from the subject matter experts. Again, I'm
14 not an expert. Maybe some of us are, but I'm not an
15 expert.

16 CHAIRPERSON MITTEN: Right. And we want
17 feedback from the Department of Parks and Recreation
18 as well as the Office of Planning.

19 MR. HANNAHAM: I'd like to get some sense
20 of Parks and Recreation and their long term planning
21 with respect to their capital budget as well. You
22 know, what are they looking at ten, 15, 20 years out?

23 There probably are people doing things
24 like that. But I would like for us to have a benefit

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1 of some of their thinking as well.

2 CHAIRPERSON MITTEN: If they are willing
3 to share that with us, then it can shape what we do.

4 MR. HANNAHAM: I think it would be very
5 helpful.

6 CHAIRPERSON MITTEN: Because that's what
7 we're thinking about as we're going forward.

8 MR. HANNAHAM: Because we're operating in
9 a sort of a vacuum.

10 CHAIRPERSON MITTEN: Yes.

11 MR. HANNAHAM: We can't guess, nobody can
12 guess what's going on out there, but I think they can
13 make a more educated guess because it's their
14 business.

15 CHAIRPERSON MITTEN: Yes. All right. Any
16 other comments, discussion?

17 (No response.)

18 CHAIRPERSON MITTEN: All right, all those
19 in favor of the revised text, please say aye.

20 (Chorus of ayes.)

21 CHAIRPERSON MITTEN: Those opposed, please
22 say no.

23 (No response.)

24 CHAIRPERSON MITTEN: Ms. Sanchez, would

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1 you record the vote, please?

2 MS. SANCHEZ: Yes, I would record the vote
3 five to zero to zero. Commissioner Mitten moving,
4 Commissioner Parsons seconding, Commissioners Hood and
5 Hannaham in favor. And Commissioner May in favor by
6 absentee ballot.

7 CHAIRPERSON MITTEN: Thank you. Now,
8 before we forget, we have the request for the
9 emergency because, in spite of our best efforts not to
10 squeeze projects out, apparently there is some urgency
11 to get some additional projects going.

12 And so I would move that we, for just one
13 time more, have an emergency rule making that is
14 consistent with the revised text that we just voted
15 on.

16 MR. PARSONS: Second.

17 CHAIRPERSON MITTEN: Any discussion?

18 MR. HOOD: With the revised text as
19 opposed to --

20 CHAIRPERSON MITTEN: The original text was
21 much more open-ended in terms of what was matter of
22 right.

23 MR. HOOD: Are they asking for us, are
24 they asking us to do an emergency on the revised text

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1 or on --

2 CHAIRPERSON MITTEN: Well, they didn't
3 know what the revised text was going to be, so --

4 MR. HOOD: But I don't think there's any
5 sense in us, Madame Chair, approving something that's
6 not going to be beneficial. They are asking for what
7 we've already approved, not for what we just went
8 through here today.

9 CHAIRPERSON MITTEN: Okay. Well, if we
10 were to, if we were to say, if we were to revise the
11 text and then say, oh, but it's okay to go forward
12 under more liberal rules, on an emergency basis,
13 that's not consistent.

14 MR. HOOD: Right, but I'm just saying,
15 here we are again commenting on something that was not
16 asked of us. I think they are asking emergency
17 ruling, they asked for previous, they didn't ask for
18 this.

19 CHAIRPERSON MITTEN: Okay.

20 MR. HOOD: Because they didn't even know
21 this was going to even happen.

22 CHAIRPERSON MITTEN: Okay. Let's get Mr.
23 Blanchard up here then, if we could.

24 MR. BLANCHARD: Commissioners.

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1 CHAIRPERSON MITTEN: You've heard the
2 discussion about the emergency --

3 MR. BLANCHARD: Yes.

4 CHAIRPERSON MITTEN: -- and can you shed
5 any light on the nature of the projects that are being
6 caught awaiting the final rule making?

7 MR. BLANCHARD: Commissioners, Lionel
8 Blanchard from Greenstein, Delorm and Luchs, on behalf
9 of the Department of Recreation. The Commissioners
10 have a chart which is attached to the OP Report, that
11 reflects projects that are, I'll call them in the
12 pipeline.

13 Some of them have gotten building permits
14 at this point, some of them have not. And my
15 understanding from the Director of the Department, is
16 that the Takoma Rec Center, which is I believe at the
17 top of Page 2 of that chart, does not yet have
18 building permits.

19 But was planned under the envelope of what
20 was allowed in the emergency regulations, because it
21 is at a 29 percent lot occupancy and a 51,000 square
22 foot. This is a very large site.

23 And that's why this building, although the
24 square footage and the lot occupancy looks large, the

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1 site itself is large and in proportion. But what I'm
2 getting at is that if the Commission changes the
3 emergency rules to be this more restricted envelope of
4 requirements, this, that would trigger Takoma having
5 to go to the BZA in order to get its building permit.

6 CHAIRPERSON MITTEN: Well, I just have to
7 ask you, why, given that there was a 240 day window,
8 were the permits not pulled?

9 MR. BLANCHARD: That question I can't
10 answer. I know that it's gone through a long
11 community feedback and planning process. I have a
12 feeling there were a number of changes that had to be
13 made to the plans in order to reflect what the
14 community wanted for that center.

15 You'll recall that this is a, like the
16 natatorium, it has a big pool. But that's the best I
17 can tell the Commissioners why the building permit
18 hasn't been obtained yet.

19 CHAIRPERSON MITTEN: I mean the
20 willingness to even pass an emergency at this point is
21 really the, it's a tenuous rationale that we could put
22 forward anyway. So for us to then go back to
23 basically backtrack to what, to the liberal text that
24 was originally set down.

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1 Because even in spite of the fact that we
2 had two emergencies, that's tough. That is very tough
3 to rationalize.

4 MR. BLANCHARD: I understand that. But
5 the Department is trying to do a lot of rec centers at
6 the same time, where capital budget authority was not
7 available in the past. And it's a huge undertaking
8 for the Department to try and get all these rec
9 centers on line at the same time.

10 CHAIRPERSON MITTEN: Okay, just give us a
11 minute. Is the site zoned? Is Reservation 377 zoned?

12 MR. BLANCHARD: Give me one minute and I
13 can see if I have that information. My understanding,
14 Commissioner, is that, you're speaking about the
15 Takoma Rec Center?

16 CHAIRPERSON MITTEN: Right.

17 MR. BLANCHARD: That is zoned R1B.

18 CHAIRPERSON MITTEN: And given that it's a
19 reservation, when did it get zoned?

20 MR. BLANCHARD: It may be that the
21 surrounding neighborhood is R1B.

22 CHAIRPERSON MITTEN: Let's do this. Let's
23 set this aside and you and whoever, Mr. Bastida or, I
24 need to know as part of this if that site even has

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1 zoning. Because you might have more issues than you
2 realize.

3 MR. BLANCHARD: Okay.

4 CHAIRPERSON MITTEN: So let's sort that
5 out and we'll continue with our agenda and come back
6 to that. All right, now we'll pick up the agenda with
7 the items under Hearing Action.

8 All right, so the first item under Hearing
9 Action is Zoning Commission Case Number 02-41. All
10 right, Mr. Parsons is leaving the room because he has
11 recused himself from this case since the land is owned
12 by the National Park Service.

13 This is Building Bridges Across the River
14 and let me just pull this out. We had raised an issue
15 at our last public meeting about whether or not what
16 was being proposed would constitute spot zoning.

17 And we got a very informative responsive
18 from Mr. Tummins on behalf of the Applicant. And I'm
19 satisfied that this would not constitute spot zoning.

20 So I'll ask the Office of Planning to then just give
21 us an overview of the project and your recommendation
22 for set down.

23 MS. MCCARTHY: Okay, Madame Chair, Ms.
24 Brown-Roberts is here with me, who is the Project

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1 Manager for this. So I'll ask her to address this in
2 more detail.

3 I just wanted to say that this, the Office
4 of Planning considers this to be a very exciting
5 project and a really tremendous amenity for this
6 entire section of town to sort of, very much
7 consistent with what we were just talking about, about
8 the feed back we've gotten from our snap plans and the
9 input from residents of that neighborhood.

10 The ability to provide ballet classes,
11 music lessons, in addition to the ball fields and the
12 other services to be provided at THEARC, means that
13 this is really a full service recreational facility.

14 The Office of Planning has met with the
15 Applicant, Building Bridges, and also, Building
16 Bridges Across the River, and also representatives
17 from the Department of Housing and Community
18 Development.

19 And we are convinced that this project
20 would be an asset to the neighborhood. I'll have Ms.
21 Brown-Roberts talk about the SP1 zoning and why we
22 have considered that to be appropriate given the range
23 of facilities that are there and the nature of SP1 as a
24 buffer zone.

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1 Even though this isn't the typical
2 situation in which an SP1 would be used, we think that
3 it is appropriate given the language of the zoning
4 regulations. So let me ask Mr. Brown-Roberts to
5 present briefly the report.

6 CHAIRPERSON MITTEN: Thank you.

7 MS. BROWN-ROBERTS: Good afternoon, Madame
8 Chairman, and members of the Commission. Building
9 Bridges Across the River has petitioned the Zoning
10 Commission to zone a portion of U.S. Reservation 501
11 to the SP1 District.

12 The subject property is owned by the
13 United States Government to fuse an operation of
14 jurisdiction has been transferred to the District of
15 Columbia and the Department of Parks and Recreation,
16 in particular, for recreation and related uses.

17 The Applicant is a non-profit organization
18 and is leasing the property and proposes to construct
19 a community center to be known as The Town Hall
20 Education and Arts Recreation, otherwise THEARC.

21 The subject property is in the Congress
22 Heights neighborhood and is approximately 16.43 acres.

23 Surrounding the subject property are a number of
24 apartments and townhouses in the R5A District.

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1 There is also the Oxon Run Park, which is
2 not zoned. The Applicant proposed initially zoning on
3 the property to the SP1 District, which is for medium
4 density development. This zone would permit various
5 community-serving uses proposed by the Applicant.

6 Phase 1 of the development, which has
7 already, is under construction, will house the
8 Covenant House of Washington. Phase 2 will
9 accommodate Levine School of Music, the Washington
10 Ballet Wellness Center and other community-related
11 uses.

12 The Office of Planning has preliminarily
13 reviewed the proposed Map Amendment and has concluded
14 that the SP1 District is appropriate density nature
15 for consideration for public hearing.

16 The proposed SP1 is designated to
17 stabilize high density commercial uses in other areas,
18 and other areas that contain existing apartment,
19 offices and institution. Further, it is to act as a
20 buffer between adjoining commercial and residential
21 areas to ensure that new development is compatible in
22 use, scale and design with a transitional function of
23 the zoned district.

24 As stated, the predominant zoning in the

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1 general vicinities, R5A to the north of the site, and
2 federal property to the south, the SP District permits
3 matter of right and variety of uses which are geared
4 towards serving the residents of the community.

5 They include private schools, community
6 center, parks, playgrounds and swimming pools.
7 Section 5413 of the Zoning Act sets out the criteria
8 the Zoning Commission must apply in adopting zoning
9 regulation.

10 And that is to promote the health, safety,
11 morals, convenience, order, prosperity or general
12 welfare of the District of Columbia in its planning
13 and orderly development in the Nation's Capital.

14 Designating the SP-1 District on the
15 subject property would be compatible, though, with
16 both the surrounding area zoning, as well as with
17 existing land use. Although the surrounding zoning
18 district are not commercial zoned, the uses that are
19 permitted in the SP District are those that will
20 provide services to the residential adjoining
21 community.

22 Although the proposed uses are
23 complementary to residential use, they are proposed to
24 be located on the edge of a residential community

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1 where they should not be disruptive.

2 And it is our opinion that this, this
3 application meets those criteria. The proposed
4 centralized mix of uses will also enhance and
5 strengthen the surrounding neighborhood. The proposal
6 and designation will further the health, safety and
7 welfare of the District, as the group permit
8 facilities that are currently not provided in this
9 community.

10 The general land use map recommends park,
11 recreation and open space for the subject site. And
12 specifically District Government Parks and Recreation
13 Centers of the National Capital Open Space System.

14 The proposal to SP-1 is consistent with
15 these recommendations. The proposed zoning is also
16 consistent with the comprehensive plan as it relates
17 to land use. The proposal will facilitate the
18 collaboration of public and non-profit organizations
19 providing much needed recreation and social services
20 in the community.

21 The ward plan, Ward 8 plan also outlines
22 objectives for public facilities and specifically
23 states that they should ensure that adequate and high
24 quality neighborhood-based public services and

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1 facilities are available and accessible to the
2 community at a minimal cost.

3 The, as demonstrated, the elements of the
4 comprehensive plan and construction of a multipurpose
5 recreation center. The proposed zoning in the
6 community has not been formally presented to the ANC,
7 however the proposed development of the site is widely
8 known and supported by the community.

9 The Office of Planning recommends that the
10 Zoning Commission set the application down for public
11 hearing. Thank you, Madame Chairman.

12 CHAIRPERSON MITTEN: Thank you, Ms.
13 Brown-Roberts. Any questions from the Commission?
14 One of the, the concern that I have, probably the
15 overriding concern that I have is that when we, even
16 though this proposal is being tailored as best it can
17 be to being a recreation oriented use, the SP-1 Zone
18 permits all sorts of uses that would not necessarily
19 be consistent with the land use map designation for
20 parks, recreation and open space.

21 And while this is a little atypical
22 because the Park Service owns the land and this is
23 going to be handled under a long term lease, and I'm
24 willing to vote in favor of the set down, it's

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1 problematic to allow this sort of liberal zoning
2 category that has all sorts of things that, you know,
3 if private users were involved, that just a blanket
4 Map Amendment would allow them to do things that were
5 not necessarily in keeping with the comprehensive
6 plan. So, I'll state that concern.

7 MS. MCCARTHY: Madame Chair, we also would
8 be more concerned about the broadness of the SP-1
9 category, but for the fact that the National Park
10 Service lease in this instance specifically calls out
11 the functions that are to be provided in THEARC.

12 And I think if it would, if it would
13 create a higher comfort level, I'm sure that by the
14 time of the public hearing, we could come back with a
15 more specific spelling out of exactly what uses would
16 be permitted in there.

17 And an indication that any other uses
18 would be prohibited or similar kind of language that
19 the Commission, by the time they would have to
20 actually adopt the zoning for this facility, could
21 determine whether they had a comfort level that the
22 uses were sufficiently controlled.

23 CHAIRPERSON MITTEN: I think that would be
24 helpful. That would be helpful for me. So anything

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1 that you can do to increase my comfort level, I would
2 propose.

3 MS. MCCARTHY: Okay.

4 CHAIRPERSON MITTEN: All right. Then if
5 there are no questions, then, for the Office of
6 Planning, we have a recommendation for set down and I
7 would so move Case Number 02-41.

8 MR. HOOD: Second.

9 CHAIRPERSON MITTEN: We have a motion and
10 a second to set down Zoning Commission Case Number
11 02-41 for public hearing. All those in favor, please
12 say aye.

13 (Chorus of ayes.)

14 CHAIRPERSON MITTEN: Those opposed, please
15 say no.

16 (No response.)

17 CHAIRPERSON MITTEN: Ms. Sanchez, could
18 you record the vote.

19 MS. SANCHEZ: Yes, staff would record the
20 vote four to zero to one. Commissioner Mitten moving,
21 Commissioner Hood seconding. Commissioner Hannaham in
22 favor, and Commissioner May in favor by absentee
23 ballot. Commissioner Parsons not voting have recused
24 himself, to approve Case Number 02-41.

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1 CHAIRPERSON MITTEN: Thank you.

2 MR. BASTIDA: Madame Chairman, this will
3 be a rule making case.

4 CHAIRPERSON MITTEN: Thank you. All
5 right, Mr. Parsons is now rejoining us, and we will
6 move on to the second item which is Zoning Commission
7 Case Number 02-46, which is a Map Amendment for the
8 Benning Road Trash Transfer Facility.

9 MR. BASTIDA: Madame Chairman, the staff
10 has provided you a copy of the entire record. And the
11 staff requests the waiver of the Office Planning
12 Report.

13 CHAIRPERSON MITTEN: All right, is there
14 any objection to waiving our rules to accept the late
15 filing of the Office Planning Report?

16 MR. HOOD: No objection.

17 CHAIRPERSON MITTEN: All right, then
18 without objection we'll accept the Office of Planning
19 Report. And turn to them for a little summary.

20 MS. MCCARTHY: Okay, Madame Chair, Steve
21 Mordfin from our office is going to present this case.

22 I just wanted, in terms of context, to indicate that
23 this, the site that we are talking about zoning
24 requires zoning solely because as federal property it

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1 has not been zoned.

2 It has been functioning as a incinerator
3 or a waste transfer facility since, continuously since
4 1969, when the transfer jurisdiction was executed with
5 the National Park Service.

6 And, but it has been operating at a level
7 of cleanliness and environmental impact, which is not
8 acceptable. And what the city, what the Department of
9 Public Works is proposing is a major upgrade for this
10 facility.

11 And, a state-of-the-act facility,
12 basically, that will substantially reduce what have
13 been the adverse impact from this facility on the
14 community up until this point in time. It's also a
15 facility that was identified in an exhaustive search
16 which the City Council appointed a Commission on sites
17 for waste transfer facilities.

18 They looked at a wide range of sites in
19 the District and came back to the Benning Road
20 Transfer Facility as one of the two sites, the other
21 one being Fort Totten, that the Waste Transfer Siting
22 Commission felt ought to be the sites, given where
23 they were geographically and their relationship to
24 waste transfer, to the sanitation trucks that go out.

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1 And it was sufficiently separated from
2 nearby residential uses to make it fit within the
3 adverse impact standards that had been set forth in
4 the zoning regulations. But let me have Mr. Mordfin
5 tell you in a little more detail why the Office of
6 Planning is supporting the M Zone for this parcel.

7 CHAIRPERSON MITTEN: Thank you.

8 MR. MORDFIN: Good afternoon, Madame Chair
9 and members of the Commission. I'm Stephen Mordfin
10 with the Office of Planning. And the Office of
11 Planning recommends the adoption of the proposed Map
12 Amendment to assign the M District to the Benning Road
13 Solid Waste Transfer Station property located on
14 Parcel 001690111, U.S. Reservation 343, and know as
15 3200 Benning Road, N.E.

16 Subject property was transferred to the
17 District in 1969, and was used as an incinerator from
18 1972 until 1994. Since 1994, it has been used as a
19 transfer facility.

20 The Department of Public Works now
21 proposes to make alterations and repairs to the
22 building and construct a building addition. Existing
23 facilities located across Anacostia Avenue from M and
24 CM-1 Districts, the uses permitted in both districts.

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1 However, the existing building conforms
2 only to the height restrictions contained within the M
3 District. Therefore, the Applicant, the Department of
4 Public Works, has requested the M District for the
5 subject property.

6 This application is consistent with the
7 provisions of the Comprehensive Plan, which
8 specifically references and promotes the upgrading of
9 this facility. And this concludes the presentation by
10 the Office of Planning.

11 CHAIRPERSON MITTEN: Thank you. Any
12 questions for the Office of Planning? Mr. Hood.

13 MR. HOOD: Madame Chair, yes, I have one
14 or two. Mr. Mordfin, in your report you go back to
15 something that I've been hearing about a lot. And
16 that's the 500 foot buffer. I think the zoning
17 regulations require 300 foot buffer.

18 I guess, isn't there inconsistency and
19 what is the Office of Planning, what would the Office
20 of Planning say that this Commissioner is to judge
21 that by? Because there's a 500 foot buffer from the
22 City Council and there's a 300 foot buffer from the
23 zoning regulations.

24 So I guess, which one?

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1 MS. MCCARTHY: I think that one actually
2 may be a question more for Mr. Bergstein, but I
3 believe when we discussed this issue with the Office
4 of Corporation Counsel before, the guidance that we
5 received, if I'm correct Mr. Bergstein, was that
6 because the zoning regulations, when the Zoning
7 Commission is considering an issue, the zoning
8 regulations are what have to apply.

9 The Comprehensive Plan is not
10 self-enforcing. And therefore we have to go with the
11 200 feet or 300 feet that's in the zoning regulations.

12 MR. HOOD: Three hundred feet.

13 MR. BERGSTEIN: Slightly different, but
14 the 300 feet is a requirement of the zoning
15 regulations, which is a minimum requirement. The
16 Council enacted legislation that related to the
17 licensing scheme for solid waste facilities.

18 And said that no solid waste facility can
19 receive a license if it's not located within 500 feet
20 of another use. And that those facilities which have
21 interim operating permits must close down by a date
22 certain if they're not located within 500 feet.

23 So it's two separate things. The 300 feet
24 is relevant for the Zoning Commission. The 500 feet

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1 is relevant for this licensing scheme. And Council
2 can promulgate more stricter setbacks than the Zoning
3 Commission has promulgated.

4 MR. HOOD: Okay. I think that's, that's
5 very clear to me. But those who use the Comprehensive
6 Plan will say to the Zoning Commission that if we do
7 300 we'll say that we're not acting, that we're being
8 inconsistent with the Comp Plan, which says 500 feet.

9 But anyway, that's another argument. The
10 other issue is --

11 MS. MCCARTHY: Also, Mr. Hood, I believe
12 this is 500 feet from the nearest residential
13 property. Fort Totten, as I recall, did not need that
14 requirement, but this project does.

15 MR. HOOD: And just out of curiosity, Ms.
16 McCarthy, is Fort Totten also scheduled to be brought
17 up to state-of-the-art?

18 MS. MCCARTHY: Yes.

19 MR. HOOD: Okay, do we have a time frame?

20 MS. MCCARTHY: Yes, I have a time table --

21 MR. HOOD: In the near future?

22 MS. MCCARTHY: -- with me, but yes, it's
23 in the near future.

24 MR. HOOD: Oh, oh, good.

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1 MS. MCCARTHY: Within the next few months
2 they expect to be completing design and to come to the
3 Commission for, I believe that one will also need
4 zoning.

5 MR. HOOD: And help me with my
6 orientation. I'm looking here on this map that was
7 provided to us. It looks like we're getting real
8 close to the Anacostia River. Is there a sufficient
9 buffer?

10 I see there's already an existing M Zone.
11 But my concern is with all these grand things that is
12 going on with the Anacostia and this M Zone. I can
13 tell you that I always have had a problem with M
14 Zones, but I know that we have to have them.

15 And they need to be strategically placed.
16 But this is right near all those exciting things that
17 I'm hearing about. And I was wondering if we had a
18 sufficient enough buffer.

19 MR. ALTMAN: Well, I think the buffer here
20 is roughly, I mean the distance from the facility to
21 the water is 200 feet, would you say? Two hundred
22 some feet. I mean generally we've been trying to have
23 at least, well on the Buzzard Point, you know, we were
24 having 75 foot set back from the water.

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1 That's more urbanized. In other places
2 you want at least 100 feet. So 200 feet, at east, is
3 substantial. I'm not saying it's ideal, but I think
4 that there is sufficient space there to do things like
5 having a river walk or have a connection up through
6 the Anacostia National Park.

7 And through there, I think it would still
8 allow for that.

9 MS. MCCARTHY: Plus I think the other, the
10 other consideration is that the present facility does
11 not have the same kind of state-of-the-art drainage
12 and other approaches that are going to limit water run
13 off.

14 And this facility has tire truck washing,
15 so that any crud that accumulates on the tires is
16 washed off and captured on site. So there's not dust
17 or trash or other odor-causing and environmentally
18 unpleasant substances that get carried off the site.

19 There's a wide range of state-of-the-art
20 features that will make this far less environmentally,
21 far less adverse impact than the existing facility
22 that's there today.

23 MR. HOOD: And I also note that we're
24 asking to zone this property, but I was looking for

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1 some type of traffic pattern. I know it already
2 exists, it's been there, and like you say, it's been
3 in existence for a while.

4 So if we don't already have it provided, I
5 don't know if this is inappropriate to ask, Madame
6 Chair, because the type of zoning they are asking for
7 is not PUD. Is there anyway when we come back for a
8 hearing that we can kind of get a general direction of
9 how the traffic pattern and how the trucks enter into
10 the site and how they leave the site?

11 MS. MCCARTHY: We can certainly ask the
12 Department of Transportation to weigh in on those
13 considerations by the, in the hearing report.

14 MR. HOOD: And the other thing I would ask
15 for, I would be very interested in the odor. I've
16 seen some around the city and I'm hoping with this
17 modernization, this is totally different from the ones
18 I've seen in the past.

19 So those are some of the things that I
20 would be looking for at the hearing. Thank you.

21 MS. MCCARTHY: In this new facility, the
22 place where, the tipping floor where the trucks will
23 actually unload, is completely covered to contain the
24 odor. And that's why the tire washing was also

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1 important, because you didn't want the trucks then
2 taking whatever had spilled on the floor out of that
3 building.

4 So it is designed to contain the odor
5 entirely within that facility.

6 MR. HOOD: Thank you. I'm looking forward
7 to seeing this modernized technology. Thank you.

8 CHAIRPERSON MITTEN: Any other questions?
9 Mr. Parsons?

10 MR. PARSONS: Well, this is a troubling
11 necessity. This land was taken from the Park System
12 of the city in 1967, because it was a burning dump
13 next to it, which was also in the Park, I might add.

14 And I think the understanding was that if
15 this use ever, no longer existed or was needed, that
16 is the incinerator function, that it would be, it
17 would revert to Park land. Although I don't have any
18 evidence of that.

19 I think that might be hearsay. But a long
20 process, the city has gone through a long process to
21 come to the conclusion that this is the place to have
22 a transfer station and I have no objection to that.

23 But I know we can't imply conditional
24 zoning, but I somehow want to do that here. So that

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1 this does not continue on in an M Zone use, 50 to 80
2 years from now, if it's not needed.

3 Or that the city continues to have a
4 manufacturing need and it gets converted and converted
5 and converted. So I don't know how to do that to say
6 it's as good as the use is. The zone will last as
7 long as the use does.

8 Because I've also heard some rumors
9 recently that, not recently, in the last two years,
10 that Pepco may be shutting down their generating
11 station here. I don't know that you can confirm those
12 rumors or not.

13 That it's now only used on a emergency
14 basis, but my information may be bad. But I mean this
15 whole area, now I'm looking at this nice diagram you
16 have provided of M and CM-1, combined with this use.

17 If Pepco was to leave, there's a
18 tremendous opportunity. And I wondered if, I don't
19 recall if the Anacostia Waterfront Initiative is
20 looking into this area specifically. Is it?

21 MR. ALTMAN: It's, in the sense, I mean,
22 it's included within the Anacostia Waterfront
23 Initiative. We have not done any specific plans for
24 this area around Benning Road.

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1 It's sort of, as you say, the facilities
2 that exist, over time, if they are not needed, our
3 hope would be that the land, in fact, would not
4 continue on in perpetuity as manufacturing use.

5 We need the facility now in terms of the
6 Benning Road Facility and the exhaustive study that
7 was done, a balancing act between sort of where can we
8 modernize facilities and then relieve pressure on the
9 neighborhoods in terms of the impact at other
10 facilities throughout the city were having on the
11 neighborhoods.

12 This was part of a consolidation plan and
13 modernization plan. But over time, obviously, if
14 facilities can be relocated or the Pepco facility is
15 no longer needed. I've only heard those rumors, but I
16 haven't heard anything more, as to how real those are.

17 MR. PARSONS: Okay.

18 MR. ALTMAN: So your concern, I think, is
19 a good one, which is how do we allow for the uses
20 today and over time not have those continuing to
21 convert.

22 If those, those are two very specific
23 facilities, should they not be needed anymore, can be
24 relocated.

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1 MS. MCCARTHY: But I do think, Mr.
2 Parsons, that Pepco plans to be there, at least for
3 the foreseeable future. They came to us last year for
4 a large tract review and they constructed new
5 buildings on that site to accommodate the employees
6 that they, I believe the ones that they were moving
7 off of their site that became the second IMF Building.

8 MR. PARSONS: Oh, really. Oh, I didn't
9 realize that. Okay.

10 MS. MCCARTHY: So they have made a
11 commitment to that, with the brand new construction on
12 that site.

13 MR. PARSONS: All right. Now, the
14 Comprehensive Plan Land Use Diagram, I believe shows
15 this is open space, correct? But you've determined
16 that --

17 MS. MCCARTHY: Yes --

18 MR. PARSONS: -- it's not inconsistent
19 with that because it's a general diagram.

20 MS. MCCARTHY: Well, I think --

21 MR. PARSONS: I'm surprised.

22 MS. MCCARTHY: I think our conclusion is
23 that diagram drew that as open space because they
24 looked at the fact that it was National Park Service

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1 Reservation and clearly it was an error because the
2 Park, the Comp Plan has been amended several times,
3 the land use element and map have been amended several
4 times since 1984, and nobody seemed to have caught the
5 fact that they were labeling as open space something
6 that was functioning as, first an incinerator and then
7 a solid waste transfer facility.

8 I think we found and cited in our report
9 considerable language in other portions of the
10 Comprehensive Plan that indicated the, especially in
11 the Ward 7 Plan, the importance of improving the
12 conditions at the Benning Road Facility as, that were
13 incorporate in the Comprehensive Plan.

14 But that's the, you know, the only
15 explanation I can come up with as to why it's still
16 colored green there, even though it clearly hasn't
17 been open space for quite a while.

18 MR. PARSONS: Well, that's not what your
19 report says. I like what your report says. That is
20 it just says that it's, the map is intended only
21 generally, it doesn't make land uses.

22 What you've said is it's a drafting error.
23 What I'm hoping is the drafting error will remain,
24 you see. And that the action of this Commission won't

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1 motivate the City Council to change it to something so
2 that they won't be inconsistent with zoning. But
3 anyway, we can --

4 MS. MCCARTHY: A point well taken.

5 MR. PARSONS: -- we can get into that more
6 at the hearing as to what we can and can't do. Thank
7 you.

8 CHAIRPERSON MITTEN: What I, just to
9 follow up on what Mr. Parsons was saying, is since we
10 are getting mixed messages from the Comprehensive
11 Plan, and they are pretty significant mixed messages.

12 Given that if the land use map says
13 something about the future, but we're dealing with
14 something that is in the present, and that is the
15 primary element for us to be not inconsistent with.

16 Then, what might be in order is a Letter
17 of Interpretation from the City Council that would
18 give us room to make an interpretation that industrial
19 zoning is not inconsistent with the Comprehensive
20 Plan, specifically the land use element.

21 That would be the first point. And then
22 the second point that I'd like to pick up on that Mr.
23 Parsons raised, is this idea of conditional zoning.

24 And the way that we typically, when we're

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1 uncomfortable with just making a flat Map Amendment,
2 is we do a PUD. And these folks are already have to
3 go for special exception, and there may be another
4 mechanism that we just have not used in the past that
5 we could explore.

6 But I'd like to ask Mr. Parsons, since he
7 raised the issue, if rather than set this down this
8 month, if you wanted to postpone, ask the Office of
9 Planning to explore something that would not
10 permanently rezone the site to M, but to use another
11 mechanism that would accommodate your concerns about
12 this.

13 It's not your concern exclusively. I
14 think everyone shares the concern about putting this
15 in place permanently. How strongly do you feel about
16 that?

17 MR. PARSONS: Well, it may end up that we
18 have to adopt some new, broader regulation. That may
19 be the answer. Because we could have, it's kind of
20 the waterfront zone on Georgetown University.

21 CHAIRPERSON MITTEN: Right.

22 MR. PARSONS: If that's what it might
23 motivate, I'd really like to do that. Because, you
24 know, I've always been told pretty abruptly that

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1 conditional zoning is --

2 CHAIRPERSON MITTEN: Not spoken of in
3 polite company?

4 MR. PARSONS: Right. That it just can't
5 be done. So if we have to have some, some parallel
6 case that says in the event the District facilities
7 which we have to zone are really inconsistent with the
8 long term needs of the city, that we should do it as
9 long as that use is in place, yes.

10 Is that a long way of saying what you were
11 saying, Madame Chair.

12 CHAIRPERSON MITTEN: No, that's good. You
13 opened the door to an alternative mechanism which I
14 think is probably time that we explored whether or not
15 such a mechanism could ever exist because it would
16 have use in a number of cases that we've had from the
17 last year or two. Ms. McCarthy.

18 MS. MCCARTHY: Madame Chair, I had already
19 written down a note that we, that we should explore
20 that with the Office of Corporation Counsel because I
21 know there are some instances in the past in which
22 there have been Map Amendments that took place with
23 covenants related to them.

24 My understanding is that this project is

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1 on a fast track, and I wonder if we could set it down
2 and try to pursue that agreement. Because, as you see
3 from the Secretary's Report, we have so many public
4 hearings lined up, there's already going to be several
5 months that will transpire between the time this is
6 set down and the time we can actually have the public
7 hearing.

8 And, as you mentioned, we've got to have
9 the special exception after that before this project
10 can actually go under construction.

11 MR. BERGSTEIN: Madame Chair, one thing
12 that Mr. Bastida and I were discussing was that this
13 is likely to be a rule making as opposed to a
14 contested Case Map Amendment.

15 One potential avenue of flexibility would
16 be to indicate in the advertisement that the
17 Commission may explore additional text as is prudent
18 in order to limit the long term effect of the
19 Amendment.

20 That would at least give you the leeway to
21 consider that at the hearing and proceed with the
22 advertisement.

23 CHAIRPERSON MITTEN: That sounds
24 excellent. But if I could just say that my level of

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1 frustration with the emergencies and the fast tracks
2 and all of this that arise from what should have been
3 known a long time ago and addressed a long time ago.

4 That these D.C. Government facilities have
5 to be zoned. I mean this is going to happen every
6 month. And we've asked Mr. Bastida, in fact, to share
7 the list of rec center locations that are on
8 Reservations with Mr. Kelly, because it looks like
9 there's a whole bunch of possible locations that don't
10 have zoning.

11 That apparently have permits that have
12 been issued. I mean we had a whole list of
13 Reservations on the rec center project.

14 MS. MCCARTHY: I believe when that came
15 up, though, originally, when the first list of 42 was
16 generated, we did sit down with the Office of Zoning
17 staff with the Zoning Administrator and discovered
18 that a number of those had been previously zoned, even
19 though they were federal facilities.

20 And that the Kenilworth one, which still
21 hasn't been filed, but that that was the only project
22 that they were proceeding on that there wasn't some
23 base zoning.

24 But unfortunately, Ms. Steingasser was the

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1 person that had been working on those details and she
2 is out of town today. But I will check with her and
3 we'll certainly follow up with Mr. Kelly.

4 We also, I don't know if you want to talk
5 about it, but we are taking steps to have a Mayor's
6 Order issued that would go to District Government
7 Agencies that would reacquaint them with the fact that
8 they have to get zoning for any of their facilities.

9 And establish a process where they would
10 have to come in to the Office of Planning, very early
11 on, so we could do these in an orderly fashion
12 pursuant to a plan or a planned unit development.

13 CHAIRPERSON MITTEN: That would be
14 welcome. Okay, let's finish up with this and then
15 let's take up the issue about the emergency on the rec
16 centers, just because we're sort of back in that frame
17 of mind.

18 So, first let's finish with the hearing
19 action on the Benning Road Facility. Any further
20 questions for the Office of Planning.

21 (No response.)

22 CHAIRPERSON MITTEN: All right, we have a
23 recommendation for set down and we have some
24 additional language that we could advertise that we

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1 may explore an additional Text Amendment that would
2 allow this not to not be put in place permanently.
3 And I would move that we set it down with the
4 additional language.

5 MR. HOOD: Second that.

6 CHAIRPERSON MITTEN: Any further
7 discussion?

8 (No response.)

9 CHAIRPERSON MITTEN: All those in favor,
10 please say aye.

11 (Chorus of ayes.)

12 CHAIRPERSON MITTEN: Those opposed, please
13 say no.

14 (No response.)

15 CHAIRPERSON MITTEN: Ms. Sanchez.

16 MS. SANCHEZ: Staff would record the vote
17 five to zero to zero. Commissioner Mitten moving,
18 Commissioner Hood seconding. Commissioners Hannaham,
19 Parsons in favor and Commissioner May in favor by
20 absentee ballot, to approve, excuse me, to set down
21 Case Number 02-46.

22 CHAIRPERSON MITTEN: Thank you.

23 MR. BASTIDA: Madame Chairman, and this
24 will be a rule making.

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1 CHAIRPERSON MITTEN: Thank you.

2 MR. BASTIDA: Thank you.

3 CHAIRPERSON MITTEN: Now just to, just to
4 finish up with the emergency on the rec centers, Mr.
5 Bastida, would you share with us what you determined
6 as to the zoning of the Takoma site.

7 MR. BASTIDA: My determination was that
8 the site is still owned by the Federal Government. It
9 is unzoned. There was some confusion because it
10 appears that building, a raising permit was issued,
11 but a raising permit doesn't require a zoning of the
12 site.

13 CHAIRPERSON MITTEN: Thank you. So, Mr.
14 Blanchard, why don't you just take a seat at the table
15 just so we can wrap this up. It sounds like the issue
16 of the emergency is moot, then.

17 MR. BLANCHARD: What I've been able learn,
18 in the intervening time, is that permits were filed in
19 June, but I don't know what for. And Mr. Bastida may
20 be correct that it's only a raise permit.

21 And from my, from what I understand,
22 permits have not been, although they have been applied
23 for, they haven't been issued yet. So it may be that
24 they've applied for building permits, but haven't yet

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1 obtained building permits.

2 And I don't know the exact answer as to
3 whether, if you haven't obtained the permit, if you're
4 allowed to go forward.

5 CHAIRPERSON MITTEN: Let's do this. Since
6 there's obviously a little bit more work to be done,
7 is that we have lots of hearings coming up and we can
8 take up the emergency at a special meeting before any
9 of those.

10 So why don't we all do a little bit more
11 work and if you want to raise it again with us, then
12 do that. And we'll vote on it at that time.

13 MR. BLANCHARD: Thank you.

14 CHAIRPERSON MITTEN: Thank you. All
15 right, back to Hearing Action. The third case, Zoning
16 Commission Case Number 02-49.

17 MR. BASTIDA: Madame Chairman, the staff
18 has provided you with copy of entire file. The staff
19 would like to bring to your attention, if you decide
20 to set it down, that the staff included in the agenda
21 and referred it to the Office of Planning because of
22 exceptional circumstances surrounding this project.

23 But that you would authorize the staff not
24 to schedule a hearing for it until the Applicant has

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1 done an exhaustive filing as a pre-hearing statement.

2 Thank you. This will be a contested Madame Chairman.

3 CHAIRPERSON MITTEN: Thank you. Does
4 anyone have an objection going forward on the basis
5 that Mr. Bastida suggested?

6 MR. HOOD: Madame Chair, I don't know if
7 this is an appropriate time, but I have another issue.
8 Maybe I'll wait to see how it's going first.

9 CHAIRPERSON MITTEN: Okay. Shall we go to
10 the Office of Planning, first, then?

11 MR. HOOD: Oh, sure, sure. I don't want
12 to obstruct that.

13 MR. BASTIDA: Madame Chairman, could you
14 waive the Office of Planning Report for lateness of
15 the Office of Planning Report, please?

16 CHAIRPERSON MITTEN: Is there any
17 objection to accepting the late filing of the Office
18 of Planning Report?

19 (No response.)

20 CHAIRPERSON MITTEN: No objection. I
21 guess, Ms. Brown-Roberts.

22 MS. BROWN-ROBERTS: Yes, thank you, Madame
23 Chairman. The District of Columbia Housing Authority
24 and ANRTCLNC seeks approval for a Map Amendment and

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1 Consolidation Planned Unit Development for the
2 development of approximately 20 acres in the Marshall
3 Heights area.

4 The development will have 169 units
5 consisting of a mix of housing types. Subject
6 property was originally a federal facility and
7 therefore unzoned. To accommodate the proposed
8 development, the Applicant has submitted an
9 Application for PUD in the R5A Zone for the
10 residential portion of the site.

11 And a PUD in the SB1 District for the
12 cultural arts center. OP recommends that the
13 Applicant, that the application be amended to include
14 a Map Amendment to the R5A District as base zoning,
15 and then accompanying PUD applications for R5A for the
16 residential portion and C1, to the C1 District for the
17 cultural arts center site.

18 A PUD in the C1 District is more
19 compatible with the existing C2A directly across Blair
20 Road from the site and existing C1 site which is two
21 blocks to the south on Blair Road.

22 Secondly, the C1 District permits any uses
23 permitted in the SP1 Zone and will not limit the
24 providers of service to non-profit organizations. And

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1 will be more appropriate as a transitional, as a
2 transitional area between the proposed residential use
3 and the C2A Zoning to the west.

4 The Office of Planning has discussed this
5 alternative with the Applicant and they are willing to
6 consider this alternative. The subject property was
7 originally a federal facility and therefore unzoned
8 and remained unzoned since ownership was transferred
9 to the city.

10 To help finance the development, DHCD has
11 submitted this approval to the Department of Housing
12 and Urban Development for a Hope 6 Grant.

13 Due to recent housing, due to recent HUD
14 requirements regarding zoning designation on the
15 property, the application needs to be at least set
16 down by the Zoning Commission at the time of filing
17 for the grant.

18 The Applicant proposes that if DHCD is
19 awarded the grant in March or April of 2003, they
20 would provide all the information required to enable a
21 complete review of the project.

22 The application meets the minimum are
23 requirements of Section 2401-1. Because further
24 processing of the application is dependent on the

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1 granting, of the grant from HUD, minimum information
2 was submitted for review, and a more detailed
3 application will be provided for review prior to
4 public hearing.

5 Development of the site, utilizing the PUD
6 process and the proposed Zoning Amendment, will
7 facilitate the development and whatever other
8 development that would provide housing for a variety
9 of income levels, housing types, as well as family
10 sizes.

11 The PUD process will allow the Applicant
12 to propose a residential development who's design,
13 architecture and site planning are complementary to
14 the surrounding community.

15 The preliminary information provided shows
16 that the application is consistent with the
17 requirements of the zoning regs and the elements of
18 the Comprehensive Plan, and therefore recommends that
19 the Map Amendment to the R5A District with a PUD for
20 the R5A and C1 to accommodate development.

21 I would also like to make a correction on
22 our report. One Page 1 of the report, under, we
23 recommended that, the sentence recommended that R5A
24 and SP1, and I would just like to make a correction to

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1 that.

2 To say that we're proposing an amendment
3 to the R5A District, and then the PUD for the R5A and
4 C1. Thank you, Madame Chairman.

5 CHAIRPERSON MITTEN: Thank you. Could you
6 just repeat the last thing that you, the correction
7 that you made. I didn't quite follow it.

8 MS. BROWN-ROBERTS: On Page 1 of our, of
9 our report --

10 CHAIRPERSON MITTEN: Right.

11 MS. BROWN-ROBERTS: -- on the recommended
12 action.

13 CHAIRPERSON MITTEN: Yes.

14 MS. BROWN-ROBERTS: I think the second to
15 the last sentence starts, amendment to the R5A
16 District or in the alternative R5A and SP1 District.

17 CHAIRPERSON MITTEN: Yes.

18 MS. BROWN-ROBERTS: And so I'd like to
19 correct that and say it should be C1.

20 CHAIRPERSON MITTEN: Oh, sorry, yes.
21 Thank you. Any questions for Office of Planning on
22 this? Mr. Hood.

23 MR. HOOD: Madame Chairman, I don't
24 necessarily have a question, but I have a problem. It

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1 raised a flag when I saw that the Housing Authority,
2 ANR Development Corporation and the Henson Development
3 Company, I'll go back and forth again.

4 Previously we had a case, which was East
5 Capital. And I know we don't mix cases, but I think,
6 I call, I think in this case we need too. I mean we
7 need to mention it.

8 I believe these groups were in violation
9 of 247.7, that says at a public hearing the Applicant
10 shall advise the Commission of the efforts that have
11 been made to apprise the affected Advisory
12 Neighborhood Commission and other individuals and
13 community groups concerning the proposed development.

14 After this Commission voted and we did
15 final action on that project, folks in that
16 neighborhood were given a letter, a Notice of Intent
17 to acquire their property. I don't recall that ever
18 being addressed down here in front of this Commission.

19 And I have a problem with them going and
20 taking houses, private houses, privately owned homes,
21 to go continue a project. And I'm going to be very,
22 very much so scrutinize this group of players, because
23 I have a problem with what we sat down here and did in
24 a prior case, and now here they are again with some of

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1 the same, try to do the same, go down the same avenue.

2 I take exception to being deceived, if I
3 was. And I think this Commission was. But I will
4 also retract my statement if I'm incorrect and the
5 record reflects that they did mention acquiring of
6 private owned homes. And I do have the proof to, I do
7 have the proof.

8 CHAIRPERSON MITTEN: Thank you. The East
9 Capital dwellings was a, I thought that was consistent
10 with what you remember that it was another Hope 6
11 Project, and that all the property was owned by the
12 Housing Authority or the federal government, I don't
13 know which, but that it was not private property that
14 was part of the application.

15 MR. HOOD: Well, I can tell you that the
16 residents of that area do have letterhead from ANR
17 Development and this, and Henson Ridge, I mean Henson
18 Development Company, Notice to Acquire their property.

19 And have been told that once, if they
20 didn't do it, and they would come back and I guess
21 they would do an eminent domain or whatever the legal
22 jargon is, I'm not familiar with it. But it's in the
23 letter.

24 CHAIRPERSON MITTEN: Well, maybe we could

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1 ask for, I don't know, Mr. Bastida or Office of
2 Planning or somebody to investigate this and then see
3 what's behind your concern.

4 MR. HOOD: Okay, that will be sufficient.

5 MS. MCCARTHY: Madame Chair, Mr. Vice
6 Chair, the Counsel for the Applicant in the East
7 Capital Dwelling reminds me that it's a two-stage PUD.

8 So they, the Applicant will be coming back before the
9 Commission and the Commission will have the
10 opportunity to address that with them directly before
11 granting the final approval for East Capital Dwelling.

12 MR. HOOD: So we're not done with East
13 Capital.

14 CHAIRPERSON MITTEN: No, we just did the
15 first stage.

16 MR. HOOD: Okay, but I guess by then, will
17 those folks who had concerns with their houses be
18 gone, I guess. I mean, because it would be too late
19 then.

20 CHAIRPERSON MITTEN: Well, I think there's
21 two issues. One is your understanding and my
22 recollection is that it was not private property that
23 was being including in that proposal because, I mean
24 that's just our recollection.

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1 Those people would have had to sign on
2 because you can't have somebody seeking out some kind
3 of zoning approval for your property like a contested
4 case zoning approval without your, you know, being
5 included in that and being consulted and agreeing to
6 that.

7 That's point Number 1. And then Point
8 Number 2 is you'll be able to confront those people
9 directly about that project on another occasion when
10 we do the second stage.

11 MR. HOOD: And just for the record, there
12 was no ex parte communication. When it was mentioned
13 to me, I did forward the information to staff, to our
14 staff. But I can tell you that I had a problem
15 finding it out or hearing bits and pieces of it out
16 there and being approached in the neighborhood. Thank
17 you.

18 CHAIRPERSON MITTEN: Thank you. The only
19 thing that I, that I would like to ask, as we go
20 forward with the Eastgate Gardens Project, is that we
21 call it a community center, not a cultural arts
22 center.

23 Because we don't have anything in the
24 zoning for that. And then I just want to clarify on

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1 Page 3 in the second paragraph under Project
2 Description, it says 25,000 square foot community
3 service center, which is yet another thing.

4 And those are only permitted as temporary
5 facilities. And I just want to make sure we're not
6 talking about a community service center. Am I
7 correct that we're not talking about a community
8 service center?

9 MS. BROWN-ROBERTS: That's correct.

10 CHAIRPERSON MITTEN: All right. I just
11 want to be clear about that. So our lingo might not
12 be perfect, but let's use what we have. Okay? All
13 right, any other questions?

14 MR. HOOD: Madame Chair, since we have the
15 Counsel here for the other case, I just want to
16 mention that, you know, I just want to throw out there
17 for the record, why do we want to, quote/unquote, take
18 folks houses who lasted through the times when things
19 weren't going good with that neighborhood.

20 Who outlasted, who stood fast and stayed
21 the course. Now that things are going to benefit in
22 that area, I think that they should be one of those
23 who receive some of those benefits too. And I just
24 wanted to add that for the record.

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1 CHAIRPERSON MITTEN: Thank you, Mr. Hood.

2 MR. PARSONS: I'm looking at the landscape
3 plan, which is attached to the application. And as
4 we've all have observed, I guess, on the other
5 diagrams, there's very steep topography in at least
6 one corner of the site.

7 And I think you'll be able to observe
8 there these trails that are proposed in the woods.
9 And it's my experience that when we propose trails in
10 topography of this kind, that we destroy the trees in
11 order to save them or in an effort to save them.

12 So I want to be asking questions during
13 the hearing about the real practicality of installing
14 trails in this wooded, steep slope without destroying
15 it. Secondly, I don't see any provision for drainage
16 diagrams.

17 And it may be early for that, but
18 certainly the drainage coming off this site today
19 versus tomorrow is a concern. So maybe that could be
20 included. Thank you.

21 CHAIRPERSON MITTEN: Thank you, Mr.
22 Parsons. Anyone else? Any other questions?

23 (No response.)

24 CHAIRPERSON MITTEN: All right. We have a

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1 recommendation to set down a PUD-related Map Amendment
2 for Eastgate Gardens that we have alternatives
3 proposed. One would be R5A and SP1 for the area of
4 the community center.

5 And the alternative would be R5A and C1
6 for the area of the community center. Do I have a
7 motion to set the case down?

8 MR. PARSONS: So moved.

9 CHAIRPERSON MITTEN: Second. Any further
10 discussion?

11 (No response.)

12 CHAIRPERSON MITTEN: All those in favor,
13 please say aye.

14 (Chorus of ayes.)

15 CHAIRPERSON MITTEN: Those opposed, please
16 say no.

17 (No response.)

18 CHAIRPERSON MITTEN: Ms. Sanchez.

19 MS. SANCHEZ: Staff would record the vote
20 five to zero to zero to set down Case Number 02-49.
21 Commissioner Parsons moving, Commissioner Mitten
22 seconding. Commissioners Hood and Hannaham in favor
23 and Commissioner May in favor by absentee ballot.

24 CHAIRPERSON MITTEN: Thank you. Okay.

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1 Now we're back to Proposed Action. One of our
2 favorite cases, Zoning Commission Case Number 02-06,
3 which are the Regulations for Eating and Drinking
4 Establishments in Neighborhood Commercial Overlays.

5 Mr. Bastida.

6 MR. BASTIDA: Madame Chairman, the staff
7 has provided you a copy of the entire record and
8 request an action on this matter. Thank you.

9 CHAIRPERSON MITTEN: All right. We had
10 asked for some additional feedback, with Mr. Kelly's
11 help, to address some concerns that the Commission had
12 regarding the measurement of the spaces and the
13 discontinuance of uses.

14 And also for spaces that, when we're close
15 to the, when we're close to the limit that's
16 prescribed, what would happen about someone who was
17 going to be looking ahead to make a significant
18 investment and they wanted to be sure that they had
19 the claim on that space.

20 And we'd been given a memo that would,
21 that would flesh out in still more detail the text of
22 1302.5 that we had advertised. And before we move to
23 a discussion of that, I would like to suggest that
24 this has become the kind of regulation that no one

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1 wants to be known for putting in place.

2 (Laughter.)

3 CHAIRPERSON MITTEN: So I don't want to be
4 one of those people. So while I don't necessarily
5 want to abandon the course of action we've been on, I
6 want to provide an opportunity for an alternative.

7 And then perhaps have an additional public
8 hearing. Knowing how much fun that's going to be, I
9 look forward to it. The alternative that I would
10 propose is that the neighborhood commercial overlays,
11 where we're focusing all of this attention is on the,
12 when a community is at the threshold and it's sort of
13 hovering back and forth at the threshold because you
14 have to maintain the measurements and you have to
15 figure out when a use has been discontinued and so on.

16 And it's getting, it's getting pretty
17 arduous and convoluted. And what I would like to
18 suggest in the alternative is that, and this would
19 require revisiting the overlays in each of the places
20 where they exist now, as it relates to the eating and
21 drinking establishments.

22 Is that there be a determination made at
23 the point in time that the overlay is put in place,
24 that the specific area in question has reached a point

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1 of over saturation with eating and drinking
2 establishments.

3 And at that point, the overlay is put in
4 place. And the overlay simply says that this
5 community has reached a point of over saturation, and
6 now going forward any eating and drinking
7 establishment that is sought to be located there, has
8 to go through a special exception process.

9 And that just stays in place indefinitely
10 until the community decides that that's no longer
11 necessary, either because the situation has changed
12 and there is no longer an over saturation, or because
13 there were adverse affects that were created by the
14 restriction.

15 Although I can't imagine that it would be
16 with the special exception process in place. But it
17 eliminates all this administrative burden and it
18 allows for much greater predictability on the part of
19 the people involved.

20 If the overlay is in place, special
21 exception. If there's no overlay in place, it's a
22 matter of right. And it's that simple. So then we
23 would have to revisit the areas where the overlay is
24 now in place to determine if in fact we believe that

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1 they have reached that saturation point and that the
2 overlay should be put in place.

3 So that's what I would like to propose as
4 a simplified alternative.

5 MR. HOOD: Madame Chair, I'm glad that we
6 thought of that. Well, I'm glad that you've come up
7 with that, because I thought what we had in front of
8 us was, to me personally, was getting very convoluted.

9 So, I'm hoping that we can proceed in that
10 manner. I think that's the way to go.

11 MR. PARSONS: I agree. Now when you
12 examine each one of these, would you do that as a
13 specific case? Or would you go over Cleveland Park
14 and you'd hear their circumstance or, and then go to
15 another place. Would they all be separate cases?

16 CHAIRPERSON MITTEN: I think that would be
17 the more organized way to deal with it.

18 MR. PARSONS: Yes. Rather than waiting
19 out in the hall for their turn.

20 CHAIRPERSON MITTEN: Right. And having a
21 really long, long hearing.

22 MR. PARSONS: Yeah. No, I think that's
23 good. I think that's good.

24 CHAIRPERSON MITTEN: All right.

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1 MR. PARSONS: So you're proposing we have
2 another hearing on the modifications we're working on
3 --

4 CHAIRPERSON MITTEN: With the --

5 MR. PARSONS: -- to the already heard
6 case.

7 CHAIRPERSON MITTEN: With the additions
8 that Mr. Bergstein has crafted --

9 MR. PARSONS: Yes, right.

10 CHAIRPERSON MITTEN: -- with Mr. Kelly's
11 help.

12 MR. PARSONS: And then OP would craft a,
13 or Mr. Bergstein would craft another memo to be sent
14 out as in the alternative?

15 CHAIRPERSON MITTEN: Well, basically, I
16 mean, I think that the alternative is pretty simple.
17 I don't have the text of the neighborhood -- can you
18 hand me the --

19 MR. PARSONS: We don't have to right now?

20 CHAIRPERSON MITTEN: No, we don't have to
21 right now.

22 MR. PARSONS: Good.

23 CHAIRPERSON MITTEN: Just basically that
24 if it was, as it relates to eating and drinking

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1 establishments, if the overlay is put in place you're
2 in a special exception mode for eating and drinking
3 establishments, that's it.

4 And maybe there's some extra special
5 exception criteria there, I don't know. But it would
6 just become so much simpler.

7 MR. PARSONS: Okay.

8 CHAIRPERSON MITTEN: And then the burden
9 would be on us at the time we put it in place to
10 determine whether or not they were really at the
11 saturation point. And it might be different for
12 different neighborhoods depending on what their
13 circumstances are.

14 MR. PARSONS: Okay.

15 MR. HANNAHAM: It almost sounds too good
16 to be true.

17 CHAIRPERSON MITTEN: Well, you know, it's
18 just kind of like you have to be with something long
19 enough and then maybe, maybe this will work. I'm not
20 making any promises. But at least it will give us a
21 chance to have sort of two alternatives.

22 The ultimate in simplicity and, not maybe
23 the ultimate in complexity, but certainly well on its
24 way to being quite complex and deciding, making a

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1 healthy decision at that point about whether the level
2 of complexity is really worth it for the result that
3 we achieve.

4 Do you have enough direction from me to
5 write what the alternative language needs to be, Mr.
6 Bergstein.

7 MR. BERGSTEIN: Yes, but I just want to
8 clarify something. What I imagine that we're going to
9 be doing is to advertise the overlay in two
10 alternatives. One with a special exception, one
11 without a special exception and that you would
12 designate at this hearing those areas for which the
13 matter of right text would apply and those for which
14 the special exception would apply.

15 Or are you considering something
16 staggered? Because if you are doing the latter, then
17 I don't know what would be in place until you made
18 those individual decisions.

19 CHAIRPERSON MITTEN: Well, in each
20 alternative there's a special exception mode. One is
21 if the overlay, the simple one is if the overlay is in
22 place, you're special exception mode.

23 The other one is if you do all these
24 measurements and you can prove all this stuff and you

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1 find you're at the threshold for that area, 25 percent
2 or whatever it is, then you're in special exception
3 mode, but you might not be.

4 The overlay could be in place and if
5 you're not to that threshold then you're in a matter
6 of right mode. So they both have the special
7 exception trigger. One is automatic and the other is
8 lots of administrative stuff and then.

9 MR. BERGSTEIN: Okay, but where you get
10 the automatic, are you talking about a separate
11 hearing other than the one that you're going to have
12 consider this text where you would examine each of the
13 overlays and then designate which ones are in special
14 exceptions, which ones are a matter of right?

15 And then if you're going to that, then
16 what is in place until you make that determination?

17 CHAIRPERSON MITTEN: This is the way I
18 would envision it if this would be the most, I think
19 this is the most orderly way. To say let's clarify
20 what do we mean by this overlay.

21 And then when we put the overlay, the
22 overlay exists as a, its a, what do they call that, a
23 template type of overlay, isn't it?

24 MR. BERGSTEIN: Oh, I know what you're

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1 speaking of.

2 CHAIRPERSON MITTEN: Isn't it a template
3 type of overlay where we would change the template and
4 then it would impact the areas where it has been put.

5 MR. BERGSTEIN: When you designate it
6 going into, yes.

7 CHAIRPERSON MITTEN: Right. So we change
8 the template and then we go back and we revisit those
9 specific areas and say, okay, now that we have a new
10 template, do we still like it for Woodley Park? Do we
11 still like to for Cleveland Park? And so on..

12 And then take them up, sort of on our own,
13 initiate these hearings on the individual
14 neighborhoods.

15 MR. BERGSTEIN: Okay, and then until you
16 do, do that, the text, as you may or may not modify,
17 would remain in place. Because you still need to have
18 something in place while you're determining which ones
19 fall into the template.

20 Or do you, or is it your sense that
21 everything would either be matter of right until you
22 designate the template, create the template and
23 designate what goes in the template, or everything is
24 special exception until you designate the template

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1 because, and create the template and designate the
2 areas.

3 Because it has to be one or the other.
4 Either we, you maintain a status quo for now, create
5 the new template, and then as you add each square in,
6 either they would be --

7 CHAIRPERSON MITTEN: Right, yes. I would
8 say we maintain the status quo until we sort this out.

9 MR. BERGSTEIN: All right, so you still
10 may need to --

11 CHAIRPERSON MITTEN: Which is the status
12 quo is, you know, not ideal.

13 MR. BERGSTEIN: Or you may still modify if
14 through the alternative language and that would remain
15 in place until you create this alternative mode.

16 CHAIRPERSON MITTEN: Right.

17 MR. BERGSTEIN: I think I'm with you.

18 CHAIRPERSON MITTEN: Okay, good. Okay, so
19 I guess, I think we probably need to just formally
20 move that we advertise the proposed text for 1302.5F,
21 G, H, I and J.

22 And in the alternative we have this more
23 simplified language that would just require special
24 exception review for eating and drinking

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1 establishments anywhere where the neighborhood
2 commercial overlay was mapped, rather than having all
3 the measurements and so forth. So I move.

4 MR. PARSONS: Second.

5 CHAIRPERSON MITTEN: All right. Any
6 further discussion?

7 (No response.)

8 CHAIRPERSON MITTEN: All those favor,
9 please say aye.

10 (Chorus of ayes.)

11 CHAIRPERSON MITTEN: Those opposed, please
12 say no.

13 (No response.)

14 CHAIRPERSON MITTEN: Ms. Sanchez.

15 MS. SANCHEZ: Staff would record the vote
16 four to zero to one. Commissioner Mitten moving, I
17 believe it was Commissioner Parsons seconding.

18 CHAIRPERSON MITTEN: Yes.

19 MS. SANCHEZ: Commissioners Hannaham and
20 Hood in favor. Commissioner May not present, not
21 voting.

22 CHAIRPERSON MITTEN: All right, thank you.
23 Okay.

24 MR. HANNAHAM: Madame Chairman, before you

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1 move on, I just want to mention that the thought
2 occurred to me that there are communities in D.C. that
3 would love to be in a position to have an
4 overabundance of eating facilities. At least of
5 certain times and certain qualities.

6 CHAIRPERSON MITTEN: I agree.

7 MR. HANNAHAM: And this might in some way
8 trigger them to sort of think about how they can get
9 their act together. Although it's a lot more, that's
10 an oversimplification. I realize the difficulty of
11 doing these things.

12 But I'm thinking particularity the part of
13 the city that I live, those people really have a
14 disadvantage in terms of access to restaurants.

15 CHAIRPERSON MITTEN: That's true.

16 MR. HANNAHAM: Even, you know, grocery
17 stores, big ones, small ones.

18 CHAIRPERSON MITTEN: If only we could make
19 it --

20 MR. HANNAHAM: I mean there is an
21 abundance of bars and joints, but respectable places
22 where people would take families and sit down and
23 enjoy a decent meal, with say, cloth tablecloths, you
24 know, that's a rarity.

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1 CHAIRPERSON MITTEN: Yes. Well, we do
2 what we can with the zoning and then the market
3 economics play a part of it.

4 MR. HANNAHAM: I know that's a different
5 thing. But it just brings to mind how disparate some
6 of these things are in the city.

7 CHAIRPERSON MITTEN: Certainly. Okay, now
8 I think we've taken care of everything on our regular
9 agenda and need to go back to the minutes. We have
10 set of minutes from our Monday, October 28th, meeting.

11 And I have some editorial changes, but
12 there were a few things, a few substantive changes
13 that I wanted to propose, just to make sure everyone
14 is in agreement.

15 Page 3 at the top, Number 3. This relates
16 to the case Sibley Hospital. We approved the set down
17 on Sibley Hospital and it's Case Number 02-29, not 27,
18 in Paragraph 3.

19 Back on Page 2, on the denial for the
20 Logan Circle PUD, that was without prejudice, not
21 with. And I wanted to be sure that we were in
22 agreement on the three cases, the waterfront open
23 space and the boat house cases.

24 I added a Number 4, that I hope we're in

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1 agreement about. That Number 4 reads, Chairman Mitten
2 specified that the hearing for Case Number 02-42,
3 which is the WO Zone, should be scheduled about a
4 month prior to other two cases.

5 Because we want there to be a time lag
6 there. And then I think the rest of my changes are
7 editorial in nature. And I would move approval of the
8 minutes of the October 28th, meeting with amendment.

9 MR. PARSONS: I would second that, Madame
10 Chair, and I just wanted to say something about this
11 boat house zone versus the Jewish Town University's
12 proposal.

13 CHAIRPERSON MITTEN: Can I just say that
14 you're recused on that. And as much as I would love
15 to hear you say that if you're going to maintain that
16 posture, I don't want you to depart from it, if you're
17 going to stay recused on that.

18 MR. PARSONS: Well, it's very similar to
19 the recreational zones we talked about today versus
20 the one over at Oxon Run that I had to recuse myself
21 from Mississippi Avenue.

22 So I , I mean I'm inclined to suggest that
23 I sit on the separate case that would run a month
24 ahead of this.

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1 CHAIRPERSON MITTEN: Oh.

2 MR. PARSONS: That is the, not the Map
3 Amendment, but the Text Amendment because --

4 CHAIRPERSON MITTEN: Okay, great.

5 MR. PARSONS: -- there are boat houses all
6 over the W Zones.

7 CHAIRPERSON MITTEN: Great.

8 MR. PARSONS: Is that all right?

9 CHAIRPERSON MITTEN: Love it.

10 MR. PARSONS: Okay. Well, not that we
11 should clarify this vote in the minutes.

12 CHAIRPERSON MITTEN: Right, I understand.

13 MR. PARSONS: Just so we all understand
14 that if I show up, you won't nervous or ask me to
15 leave.

16 MR. HOOD: Are you asking us to vote on
17 that, Madame Chair? No.

18 (Laughter.)

19 CHAIRPERSON MITTEN: No, I think that's
20 good.

21 MR. PARSONS: I'd be afraid to ask for a
22 vote on that. We might be here for, you know, some
23 time.

24 CHAIRPERSON MITTEN: There's not a whole

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1 lot of room for negotiation on that.

2 (Laughter.)

3 CHAIRPERSON MITTEN: Okay, anyone else?

4 Then all those in favor, please say aye.

5 (Chorus of ayes.)

6 CHAIRPERSON MITTEN: Those opposed, please
7 say no.

8 (No response.)

9 CHAIRPERSON MITTEN: Ms. Sanchez.

10 MS. SANCHEZ: Yes, staff would record the
11 vote four to zero to one, to approve the meeting
12 minutes of October 28th. The motion was made by
13 Commissioner Mitten, seconded by Commissioner Parsons
14 and approved by Commissioners Hannaham and Hood.
15 Commissioner May not present, not voting.

16 MR. HANNAHAM: Madame Chairman, I was not
17 present at that meeting either.

18 CHAIRPERSON MITTEN: Oh, okay. So
19 perhaps, would you like to be recorded as, as present
20 but not voting, not having been present at -- you're
21 present now, you just weren't present then.

22 MR. HANNAHAM: I'm present now, but I
23 would like to read up on a couple of the cases.

24 CHAIRPERSON MITTEN: Oh, certainly.

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1 Right.

2 MS. SANCHEZ: Change the vote to three to
3 zero to two?

4 CHAIRPERSON MITTEN: Yes, thank you.

5 MS. SANCHEZ: And making that Commissioner
6 Hannaham present, but not voting, having not
7 participated.

8 CHAIRPERSON MITTEN: There you go.

9 MR. HANNAHAM: Right, that's great.

10 CHAIRPERSON MITTEN: Okay. Then we have
11 the special public meeting minutes of November 4th.

12 MR. HOOD: I make a motion that we approve
13 our public meeting minutes of November 4th, with any
14 necessary corrections.

15 (Laughter.)

16 MR. PARSONS: I don't know whether to
17 second that or not. But I will.

18 CHAIRPERSON MITTEN: Okay, any discussion?

19 (No response.)

20 CHAIRPERSON MITTEN: All those in favor,
21 please say aye.

22 (Chorus of ayes.)

23 CHAIRPERSON MITTEN: Those opposed, please
24 say no.

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1 (No response.)

2 CHAIRPERSON MITTEN: Ms. Sanchez.

3 MS. SANCHEZ: Yes, staff would record the
4 vote four to zero to one to approve the meeting
5 minutes of November 4th, 2002. The motion was made by
6 Commissioner Hood, seconded by Commissioner Parsons
7 and approved by Commissioners Mitten and Hannaham.
8 Commissioner May not present, not voting.

9 CHAIRPERSON MITTEN: Thank you. And now,
10 saving the best for last. If we could have the Office
11 of Planning Status Report.

12 MS. MCCARTHY: Okay, as a little glimpse
13 of the future, January will be another busy time in
14 terms of set downs. The Earth Clot, an unlikely names
15 Applicant, is asking for a Map Amendment in the Mount
16 Pleasant area.

17 The D.C. Building Industry Association has
18 petitioned for a change in the text with regard to
19 arcade enclosures. This is partly because, as the
20 Commission members who have sat on these cases know,
21 there have been a number of cases coming before the
22 Commission to fill in on arcades which have retail
23 that has failed in the arcades that are being filled
24 in so it can relate to the street better.

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1 So rather than have those dribble in
2 individually, D.C. Building Industry Association has
3 proposed we simply change the Text Amendments with
4 regard to that or the text of the zoning regs with
5 regard to that.

6 Takoma Industrial Area, as a result of the
7 Takoma Plan, that I believe the Commissioner were
8 briefed on in the site visit to Takoma. There was a
9 proposal made for re-zoning a small section of the
10 industrial area there to, I believe, C2A.

11 And we expect to come forward with that in
12 January. And then Southeast Federal Center, we have
13 drafted an initial cut at zoning that would require a
14 mixed use area in what is now the federal, Southeast
15 Federal Center, which is now federally owned.

16 The Southeast Federal Center which was
17 programmed to be basically an office complex and is
18 now free to become a mixed use area. So we have
19 forwarded our draft to the General Services
20 Administration.

21 And we hope to come before you with a
22 consensus of both GSA and the Office of Planning with
23 regard to that. But at any rate we, because of the
24 request for proposal; which is being released by GSA,

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1 that they anticipate sending out the end of this
2 month, we want to have zoning set down to provide
3 guidance to developers who are going to get that
4 request for proposals and who are going to wonder
5 what, what is the relevant land use policy on that
6 site.

7 So we've definitely said January is when
8 we want to bring that forward to the Commission,
9 whether or not we've been able to work out agreement
10 with GSA.

11 And then I know the Department of
12 Transportation has been looking for a January set down
13 but we just are still so far apart on a number of
14 design issues and amenities package, that spring 2003
15 is the best we can do in terms of estimating that one.

16 So those are the ones that we can see into
17 the near future for.

18 CHAIRPERSON MITTEN: It really does look
19 like we're going to be busy. I'd like, I mean I don't
20 know, this is a long shot, but I wish we could figure
21 out a way to get more done in, I mean a month goes by
22 and even though we get a lot done, things are piling
23 up quicker than we can move them along.

24 So if anyone has any ideas about how we

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1 can get more done, I would welcome the suggestions.
2 Thank you. Any questions for Ms. McCarthy? No.

3 MR. PARSONS: I do. I'm a little confused
4 about the Kenilworth Park Amendment, which what, on
5 the third page. The report from you in April, the set
6 down report for that case, and it says that they
7 haven't filed an application yet.

8 So you're ready to go, but the Department
9 of Parks and Recreation is not?

10 MS. MCCARTHY: Right, we are looking for
11 you to average this in with all the reports that had
12 been late. Because, as you can see, you know, we go
13 by the mean.

14 We're in pretty good shape. I don't, I
15 don't fully understand the delay. We drafted the
16 first report having been assured that the application
17 was, you know, almost finalized and ready to go.

18 I mean we had some draft information from
19 them, but no more. And then we were told it was going
20 to be coming in that next month. And again,
21 unfortunately, I know Ms. Steingasser is the one that
22 has been in closest contact with the Parks and
23 Recreation Department or specifically, it's too bad
24 Mr. Highsmith is not here anymore, because it is his

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1 organization, J.R. Lynch, that has the contract from
2 the National Parks or from the District Parks and
3 Recreation and they are the ones that are responsible
4 for preparing that application.

5 MR. PARSONS: Well, I'm a little concerned
6 with the action we took today and, I'm not concerned
7 with the action we took today, but let me finish my
8 sentence because the way I, my tone was wrong.

9 That the Zoning Commission is going to be
10 anti-recreation, this is Mr. -- you're laughing. And
11 I guess I've been in government too long, but I know
12 the government is always wrong when it's accused of
13 delaying the recreation of this city, we're guilty
14 until we're proven innocent.

15 So is there some way, through a letter or
16 something, that we could caution the Department of
17 Recreation that these regulations aren't going to be
18 enough. That they have to get zoning on their sites
19 as well.

20 And we stand ready to assist. And of
21 course you're the ones that are going to be getting in
22 trouble here. It won't be me. But I mean, you know,
23 you're out in the community and you hear these kinds
24 of things.

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1 And because we'll be blamed for delaying
2 these recreation -- 30 million dollars they're going
3 to spend. I don't know what I'm talking about,
4 obviously, it's the end of the day. Should we send
5 the Recreation Department a letter and say something.

6 CHAIRPERSON MITTEN: I think that's a good
7 idea. I mean especially since today we shared the
8 list of the recreation center sites, their projects.
9 And they, what Ms. McCarthy said may very well be
10 true, that they have achieved zoning on them.

11 But on the Takoma parcel in particular,
12 which was, I mean think that they had not been aware
13 of that until, you know, maybe an hour ago. That
14 there's obviously some slippage.

15 And somebody needs to play heads up ball,
16 and it might as well be us. And so if the thing is to
17 say, look, we've given this list to DCRA, now make,
18 let's everybody work together.

19 Let's be the people that say that. So,
20 Mr. Bastida, would you draft a letter to that effect?

21 MR. BASTIDA: Yes, Madame Chairman.
22 Should I draft it for your signature?

23 CHAIRPERSON MITTEN: Yes.

24 MR. BASTIDA: Okay, thank you.

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1 CHAIRPERSON MITTEN: That's good. Well,
2 it is.

3 MR. PARSONS: I know.

4 CHAIRPERSON MITTEN: I can tell you things
5 get --

6 MR. PARSONS: We could be sitting here
7 next June.

8 CHAIRPERSON MITTEN: Well, and things get
9 mischaracterized about what we do, all the time.

10 MR. PARSONS: It's easy to do that,
11 because it's so confusing.

12 CHAIRPERSON MITTEN: Yes. Well, and it's,
13 you know, we have our procedures that we have to
14 follow and sometimes that gets misunderstood.

15 Okay, let's see if we have anything else.
16 Anything else, Mr. Bastida?

17 MR. BASTIDA: The rest of the agenda is
18 self-explanatory.

19 CHAIRPERSON MITTEN: All right.

20 MR. BASTIDA: And, but I would like to
21 meet with the Commissioner for a minute right after
22 the hearing, after the meeting is adjourned.

23 CHAIRPERSON MITTEN: Thank you.

24 MR. PARSONS: I'd like to remind everybody

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1 I won't be here for the February meeting. But I'll
2 try to proxy or absentee vote.

3 CHAIRPERSON MITTEN: All right, and we
4 can, we can explore whether or not we should change
5 the date too. I mean depending on the volume of work,
6 we need to check that out.

7 MR. HOOD: Since Mr. Parsons won't be here
8 for February, we can do recreation centers.

9 (Laughter.)

10 CHAIRPERSON MITTEN: I think we're ready
11 to adjourn now. Thank you.

12 (Whereupon, the foregoing matter was
13 concluded at 4:25 p.m.)
14
15
16

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